

Annual Policy Report 2010

Parusel, Bernd; Schneider, Jan

Veröffentlichungsversion / Published Version

Forschungsbericht / research report

Empfohlene Zitierung / Suggested Citation:

Parusel, B., & Schneider, J. (2011). *Annual Policy Report 2010*. (Annual Policy Report / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ)). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-68278-6>

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Annual Policy Report 2010

by the German National Contact Point
for the European Migration Network (EMN)



Project financed by the
European Commission

Publisher:

Federal Office for Migration and Refugees
– German EMN National Contact Point and
Migration and Integration Research Section –
90343 Nuremberg

Overall Responsibility:

Dr. Axel Kreienbrink (Migration Research)
Dr. Iris Schneider (EMN National Contact Point)

Editorial Team:

Dr. Bernd Parusel
Dr. Jan Schneider

Source of Supply:

Bundesamt für Migration und Flüchtlinge
Frankenstrasse 210

90461 Nürnberg

www.emn-germany.de

E-mail: EMN_NCP-DE@bamf.bund.de

Date: March 2011

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Executive Summary

The Annual Policy Report 2010 gives an overview of the key political debates and developments in the fields of migration, asylum and integration in the Federal Republic of Germany in 2010. In particular, it deals with the current status and the implementation of the measures described in the European Pact on Immigration and Asylum, which the European Council adopted at its meeting on 15/16 October 2008, and the implementation of the five-year Stockholm Programme (2010 – 2014) with the title “An open and secure Europe serving and protecting the citizens”, which the European Council adopted on 10/11 December 2009. By signing these two documents the European Union and its Member States have made a number of fundamental commitments in immigration and asylum policy. In addition to the information included in the main part of this report, a separate appendix will deal with the implementation of these commitments.

In 2010 the Federal Republic of Germany took a number of measures to implement the Pact and the Stockholm Programme. The most important developments were as follows:

- Germany participated in reception and allocation projects for persons who needed protection;
- the three large-scale integration policy procedures were continued – the National Integration Plan, the development and implementation of the nationwide Integration Programme, the dialogue in the framework of the German Islam Conference –; so-called integration contracts were introduced in a pilot programme and the Federal Integration Council was established;
- legislative measures were prepared to make the recognition of foreign professional degrees and qualifications easier.

Other key political and legal developments in the fields of migration, integration and asylum in 2010 were as follows:

- introduction of a bill dealing with certain questions of residence and asylum law, such as ways to combat forced marriages and better protect the victims of such marriages;
- decision of the conference of the ministers and senators of the interior of the Federal States to create a secure residence outlook for teenagers and adolescents whose deportation has been suspended, provided that they meet certain preconditions;
- signing and entry into force of a bilateral readmission agreement with the Republic of Kosovo.

Key migration and integration policy debates in 2010 focused on the following issues:

- lack of skilled labour, labour-market migration and ways to facilitate the immigration of foreign workers;
- integration of immigrants and migrants; this debate was triggered by the publication of a controversial book.

1 Introduction: Purpose and Methodology

The Annual Policy Report 2010 gives an overview of the most important political discussions and developments in the field of migration and asylum in the Federal Republic of Germany in 2010. It was prepared by the German National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) in Nuremberg.¹

In accordance with Article 9(1) of Council Decision 2008/381/EC of 14 May 2008 establishing the European Migration Network, each EMN National Contact Point is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include legal changes, policy developments and key statistical data. This annual report on the migration and asylum situation (the “Annual Policy Report”) aims to meet the information needs of Community institutions and of Member States’ authorities and institutions by “providing up-to-date, objective, reliable and comparable information on migration and asylum”² and thus to support the decision-making process at the EU level. Moreover, the results arrived at in the framework of the EMN are to be made available to the public. In addition to the individual, national reports the European Commission, to which the EMN reports, prepares an annual summary with the most important contents and results of the national reports.

Like its predecessor, the Annual Policy Report 2009, the Annual Policy Report 2010 will serve another purpose as well. In line with a suggestion by the Commission, the reports by the 27 national Contact Points of the EMN are to help monitor progress with the implementation of the European Pact on Immigration and Asylum, which the European Council adopted at its meeting on 15/16 October 2008.³ Under the European Pact the Member States have entered into five basic commitments in immigration and asylum policy. The details and the concrete implementation of these commitments are one of the issues of the Stockholm Programme. The five-year Stockholm Programme for the period 2010 – 2014 was adopted on 10 and 11 December 2009 by the Heads of State and Government.⁴ The basic commitments under the European Pact on Immigration and Asylum are as follows:

- shaping legal immigration with a view to the priorities, needs and reception capacities defined by each Member State and promotion of integration;
- fighting illegal immigration, in particular by making sure that illegally resident foreigners return to their countries of origin or move to a transit country;
- increasing the efficiency of border controls;
- creating a Europe of asylum;
- developing a comprehensive partnership with the countries of origin and transit which promotes synergies between migration and development.

¹ The authors wish to thank Sabine Klotz for her assistance with information collection and processing.

² Art. 1(2) of the [Council Decision of May 14 2008 establishing a European Migration Network](#).

³ Note of the Council of the European Union on the European Pact on Immigration and Asylum, doc. no. 13440/08, 24 September 2008.

⁴ [The Stockholm Programme – An open and secure Europe serving and protecting the citizens](#), Official Journal of the European Union, C 115, 4 May 2010, p. 1-38.

In the framework of the “tracking method”⁵, which aims to monitor the implementation of the European Pact on Immigration and Asylum, the Commission will prepare an annual report, which will include contributions from the Member States and factual information from a range of sources. This report helps to prepare the annual discussion of the Pact in the European Council. This Policy Report 2010 for Germany is one of the contributions to the Commission’s annual report.

In terms of contents, the sixth Policy Report is largely based on the Policy Reports of former years.⁶ It largely follows the structure provided by the EMN, which the EMN Contact Points for the other EU Member States use as well in preparing their national reports and which, for 2010, gives particular weight to the rules of the Pact and the Stockholm Programme.⁷

Chapter 2 gives an overview of the political structures, the existing institutions, any changes to these structures and general policy developments in 2010. Chapter 3 sketches relevant political and legal developments and important political debates on migration, integration and asylum. Chapters 4-8 deal extensively with the concrete political and legal measures in twelve specific areas of immigration and asylum policy with a focus on the basic commitments under the Pact and any progress and new developments in this respect. Chapter 9 focuses on developments which affect the global, overall approach to migration. And Chapter 10 finally deals with concrete issues concerning the implementation and interpretation of EU law in 2010.

The Appendix will give a systematic overview of the concrete implementation of the commitments and goals of the European Pact on Immigration and Asylum and the Stockholm Programme.

1.1 Methodology

The Policy Report 2010 is based on numerous sources of data and information. It is largely a more detailed version of the tabular report on the implementation of the commitments under the European Pact on Immigration and Asylum and the Stockholm Programme sent to the EU commission at the end of December 2010. This tabular report (see the Appendix) mainly includes reports and information from the operative units of the departments which deal with the contents of the Pact and the Stockholm Programme at the federal level. Moreover, factual information from the relevant operative units of the Federal Office for Migration and Refugees (BAMF) was included. Information on political debates and the status of legislative procedures stems mainly from internet sources, such as printed papers and minutes of plenary meetings of the two chambers of parliament (Bundestag and Bundesrat), official journals and press releases or other public statements by ministries, authorities and political parties. In some cases, relevant statements and publications by non-governmental organisations or international organisations were used as well. Moreover, excerpts from nationwide print media were included for certain issues. All external sources are given in the footnotes.

The majority of figures and statistics were provided by the BAMF, the Federal Statistical Office, the Federal Employment Agency and IOM. As the Annual Policy Report was already completed by the end of January 2011, some data on migration for 2010 were not available yet.

⁵ Communication from the Commission to the Council and the European Parliament: “[Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum](#)”, 10 June 2009, COM (2009) 266 final.

⁶ See for example the [Policy Report 2008](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, or the [Policy Report 2009](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF.

⁷ European Migration Network, Specifications for Annual Policy Report 2010 (Final Version: 19th October 2010), MIGRAPOL European Migration Network Doc 208.

With regard to the description of developments which go beyond the content of the Stockholm Programme or the commitments under the Pact we limited ourselves to the most important changes in 2010. Topics for this Report were selected and weighted according to their relevance to the work of political decision-makers at both the national and the European level. In particular, it was necessary to limit the number of issues dealt with in the section on “Main policy and/or legislative debates” (chapter 3.2). In order to keep the possible spectrum of issues manageable, only those debates were regarded as “main political debates” and included in the analysis which were given extensive treatment in the mass media (national newspapers, public and private TV stations) *and* which were an issue for the Federal Government, the Bundestag or the state parliaments. If chapters 4 – 8 mention developments beyond the commitments under the Pact and the Stockholm Programme, these are also events or debates which were key during the reporting period in the sense that they were the subject of national media reports and parliamentary debate.

1.2 Terms and Definitions

The terms used in this report are based on the Asylum and Migration Glossary of the European Migration Network and – if referred to – the terms used in the European Pact on Immigration and Asylum and the Stockholm Programme. Terms which refer to the legal situation in Germany are explained in the text or in footnotes. If any issues were already treated in preceding EMN Annual Policy Reports, the footnotes will refer to the relevant sections of these Reports.

2 General structure of the political and legal system in Germany

2.1 General structure of the political system and institutional context

Under the Basic Constitutional Law, the Federal Republic of Germany is a democratic and social Federal State. Policies are formulated and implemented in a political system in which legislative and executive responsibilities are shared by the Federal Government and the 16 Federal States (*Länder*). The executive system of the Federal Republic is based on three principles: the chancellor principle, the collegiate principle and the departmental principle. Under the chancellor principle, the chancellor sets the guidelines for policy and manages the affairs of the Federal Government. The collegiate principle says that matters of a general political nature must be decided upon together with all ministers; the cabinet has to reach majority decisions. Under the departmental principle, each minister bears responsibility for his or her department and has specific competences for action.

Below, we will sketch the competences of the major actors in the areas of asylum, migration and integration policy.⁸

- The Federal Ministry of the Interior (BMI) bears the main responsibility. Beyond drafting legislation, it deals with European harmonisation and supervises the Federal Office for Migration and Refugees, the central operative authority.
- Another important venue of policymaking is the Conference of the Ministers and Senators of the Interior of the Federal States (IMK), in which the Federal Minister of the Interior participates in an advisory capacity. The Conference usually takes place twice a year at the highest political level; its unanimous decisions are political recommendations and, as such, are taken into account in legislative and administrative practice at the state and federal level.
- In coordination with the BMI, the Federal Ministry of Labour and Social Affairs (BMAS) handles the legal basis for the employment of foreigners and their sector-specific integration into the labour market.
- Under the supervision of the Federal Ministry of Foreign Affairs, the embassies and diplomatic missions abroad are responsible for all passport and visa issues related to foreign countries.
- The Federal Government Commissioner for Migration, Refugees and Integration is appointed by the Federal Government. The Commissioner advises the government and is to be involved in any relevant legislative projects. Another task is to promote the integration of migrants who are permanently resident in Germany and to counteract xenophobia. Since 2005 the Commissioner has been institutionally attached to the Chancellery in the rank of a state minister.
- The Federal Government Commissioner for Repatriation Issues and National Minorities is attached to the BMI and is responsible for coordinating all measures directed at ethnic German repatriates. With a view to national minorities the Commissioner is the key point of contact; he

⁸ These have remained largely unchanged during the reporting period. For a more detailed description please see Schneider, Jan (2009): [The Organisation of Asylum and Migration Policies in Germany](#), Nuremberg: Federal Office for Migration and Refugees.

or she represents the Federal Government in existing or future contact institutions and provides information.

- The Federal Office for Migration and Refugees (BAMF) is a superior federal authority among the subordinate authorities of the BMI and is a competence centre for numerous tasks in the fields of migration, integration and asylum. The headquarters of the BAMF are located in Nuremberg; moreover, it has 22 branch offices that are spread across all German Länder. The BAMF conducts all asylum procedures in Germany including the Dublin procedures to determine responsibility in the asylum procedure and decides on whether a claimant is a refugee under the Geneva Convention and on whether the preconditions for subsidiary protection are met. The BAMF is also responsible for drafting, implementing and developing integration courses for immigrants; refocussing the advice provided to adult migrants who are no longer in training; promoting projects for the social integration of ethnic repatriates and foreigners who are permanently resident in Germany; scientific research on migration issues; promoting voluntary returns; keeping the Central Register of Foreign Nationals; recognising research institutions in the framework of the so-called EU Researchers Directive; conducting the admission procedure for Jewish migrants from the former Sowjet Union; and developing the Nationwide Integration Programme. Moreover, the BAMF coordinates information flows between the relevant authorities concerning the residence of foreigners who have come to Germany for employment purposes and of foreigners who might be a threat to public security and therefore be the subject of measures under foreigner, asylum or nationality law.⁹
- The roughly 600 foreigners' authorities in the 16 states are responsible for practically all residence and passport measures foreseen in the Residence Act and other immigration regulations, including decisions about removals, the organisation of removals and the examination of the presence of any prohibitions on deportation outside asylum procedures.
- In addition to numerous other administrative tasks it undertakes on behalf of the Federal Government, the Federal Administration Office (BVA) is responsible for the entry and reception procedure for ethnic German repatriates. Moreover, it processes the data of the Schengen Information System (SIS) and, on behalf of the BAMF, the data stored in the Central Register of Foreign Nationals.

2.2 General structure of the legal system

Legislative responsibilities overlap as well; lawmaking competencies are split between the Federal Government and the 16 Länder governments. In principle, the Länder may adopt laws for all areas for which the Federal Government is not explicitly responsible. While some policy areas are subject to the exclusive legislative power of the Federal Government, the Federal Government and the state governments exercise concurrent legislative powers in most areas. This means that the governments of the 16 states may adopt laws in a given field as long as the Federal Government has not done so before and taken responsibility. In practice, most issues that are subject to concurrent legislation have by now become subject to federal legislation. Issues that are relevant in migration policy, such as nationality, freedom of movement, immigration and emigration, national identity cards, registration issues and foreigners' rights of residence, have been regulated by federal laws. All overarching

⁹ For a more detailed description please see Schneider, Jan (2009): [The Organisation of Asylum and Migration Policies in Germany](#), Nuremberg: Federal Office for Migration and Refugees. The key tasks of the Federal Office are set out in section 75 of the Residence Act.

legislation in the area of refugee and resettlement law has been adopted by the Federal Government as well. The only major policy subjects which are relevant for migration and are almost exclusively regulated by the Federal States are education, research and police affairs; however, removals of foreigners who are obliged to leave the country and transfers under the Dublin Procedure are organised in cooperation with the Federal Police (*Bundespolizei*).

At the Länder level the ministers or senators of the interior are responsible for all asylum and aliens-law-related issues. Even if there are no state laws in the areas of immigration, asylum and integration, the states have a major impact on the actions of the foreigners' authorities, i.e. on administrative implementation, as they adopt decrees and administrative regulations. In addition, they influence federal lawmaking by their rights of participation and veto in the Bundesrat – the second chamber of the German parliament, which consists of representatives of the 16 Federal States. In lawmaking, the Bundesrat has a similar role to that of the upper houses or senates in other parliamentary democracies. The Bundesrat discusses each and every bill adopted by the Bundestag (the first chamber of parliament). However, only draft bills of major importance and/or draft bills which will increase the states' administrative expenses need to be adopted by a majority in the Bundesrat as well. In all other cases, a veto by the Bundesrat can be overruled by a qualified majority in the Bundestag. As almost all political measures in the area of migration and asylum somehow impact the Federal States directly and burden them with administrative tasks, such laws regularly need to be adopted by the Bundesrat.

Laws and Ordinances

German immigration law is based on international law, European Community law and German constitutional and statute law.

- The Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (the Immigration Act, *Zuwanderungsgesetz*)¹⁰, whose main provisions entered into force on 1 January 2005, was the beginning of a fundamental redirection of foreigners' law. The Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act, *Aufenthaltsgesetz*) – the key element of the Immigration Act – forms the most important legal basis for the entry, residence and employment of third-country nationals in Germany. It also defines the legal minimum state efforts to promote integration, in particular via language and orientation courses. In contrast, the entry of third-country nationals and their subsequent, short-term residence in Germany are regulated by the provisions of the Schengen Convention and the Schengen Borders Code.¹¹

In October 2009, the General Administrative Regulation relating to the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*) entered into force. It aims in particular to harmonise administrative practices in the application of the Residence Act on the Federal territory and to guarantee minimum standards.¹²

¹⁰ Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act) of 30 July 2004 (Federal Law Gazette I, p. 1950); parts of the Immigration Act already entered into force on 6 August 2004 and on 1 September 2004 (see Art. 15 (1) and (2) of the Immigration Act).

¹¹ [Regulation \(EC\) No. 562/2006](#) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Issues concerning the residence and freedom of movement of citizens of other EU Member States are regulated in the second part of the Immigration Act, the Act on the Freedom of Movement of EC Nationals (Free Movement Act/EU) of 30 July 2004 [Federal Law Gazette I, p. 1950, 1986], last amended by Article 7 of the Act dated 26 February 2008 [Federal Law Gazette I, p. 215]).

¹² Joint Ministerial Gazette No. 42-61, dated 30 October 2009, p. 877.

- Article 16a(1) of the Basic Constitutional Law (*Grundgesetz*) grants persons who are subject to political persecution a right to asylum in Germany. Applications for asylum are examined in the framework of an asylum procedure under the Asylum Procedure Act (*AsylVfG*).¹³
- Foreigners who are threatened by political prosecution are granted refugee status within the meaning of the Convention relating to the status of refugees of 28 July 1951 (Geneva Convention) pursuant to the provisions set out in the Asylum Procedure Act and the Residence Act. The rules for granting residence permits to persons who are entitled to asylum and for subsidiary protection are also set out in the Residence Act, section 25 (1) and section 60 (2), (3), (5) and (7).
- The Asylum Seekers Benefits Act (*AsylbLG*)¹⁴ forms the legal basis for benefits for asylum seekers during the asylum procedure and for other foreigners whose residence is not meant to be permanent.
- The key legal basis for the administration of foreigners' data stored by the authorities is the Central Register of Foreign Nationals Act (*Ausländerzentralregistergesetz, AZRG*).¹⁵

Below the federal level there have been a number of ordinances which set out the legal framework for the residence, employment and integration of foreigners as well as benefits for asylum seekers and procedures for dealing with them.

- The Ordinance Governing Residence¹⁶ clarifies details concerning the entry into and residence in the Federal Territory, fees and procedural rules for the granting of residence titles.
- The Employment Ordinance¹⁷ clarifies the procedures for permitting the employment of foreigners who want to move to the Federal Republic of Germany from a third country in order to take up a job and lists the relevant fields of employment.
- The Employment Procedure Ordinance¹⁸ supplements the Employment Ordinance and specifies under which conditions foreigners who are legally resident in Germany may take on a job.
- The Integration Course Ordinance¹⁹ regulates details concerning the implementation of the integration courses foreseen in the Residence Act, such as the conditions for participation, data transmission, fees and the basic structure, duration and contents of the courses. Moreover, it governs the admission procedures for public and private course providers.
- The Ordinance on Determining Responsibilities in the Area of Asylum²⁰ regulates the competencies and responsibilities of the major operative authorities in the asylum procedures. In

¹³ Asylum Procedure Act (*AsylVfG*) in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), as amended by Article 18 of the Act dated 17 December 2008 (Federal Law Gazette I, p. 2586).

¹⁴ Act on Benefits to Asylum Seekers (*AsylbLG*) of 5 August 1997 (Federal Law Gazette I, p. 2022), last amended by Article 2 e of the Act dated 24 September 2008 (Federal Law Gazette I, p. 1856).

¹⁵ Central Register of Foreign Nationals Act (*AZRG*) of 2 September 1994 (Federal Law Gazette I, p. 2265), last amended by Article 4 (4) of the Act dated 30 July 2009 (Federal Law Gazette I, p. 2437).

¹⁶ Ordinance Governing Residence (*Aufenthaltsverordnung, AufenthV*) of 25 November 2004 (Federal Law Gazette I, p. 2945), last amended by the Ordinance dated 2 August 2010 (Federal Law Gazette I, p. 1134).

¹⁷ Employment Ordinance (*Beschäftigungsverordnung, BeschV*) of 22 November 2004 (Federal Law Gazette I, p. 2937), last amended by the Ordinance Amending the Employment Ordinance of 18 December 2009 (Federal Law Gazette I, p. 3937).

¹⁸ Employment Procedure Ordinance (*Beschäftigungsverfahrensverordnung, BeschVerfV*) of 22 November 2004 (Federal Law Gazette I, p. 2934), last amended by Article 7(2) of the Act dated 21 December 2008 (Federal Law Gazette I, p. 2917).

¹⁹ Integration Course Ordinance (*Integrationskursverordnung, IntV*) of 13 December 2004 (Federal Law Gazette I, p. 3370), last amended by the First Ordinance Amending the Integration Course Ordinance dated 5 December 2007 (Federal Law Gazette I, p. 2787).

²⁰ Ordinance Reformulating the Ordinance on Determining Responsibilities in the Area of Asylum (*Asylzuständigkeitsbestimmungsverordnung, AsylZBV*) of 2 April 2008 (Federal Law Gazette I, p. 645).

doing so, it takes into account key Community law, such as the Dublin Agreement or the Eurodac Regulation.

- The Ordinance on Naturalisation Tests²¹ regulates the naturalisation tests (see chapter 4.5).

²¹ Ordinance on Naturalisation Tests of 5 August 2008 (Federal Law Gazette I, p. 1649).

3 General developments related to asylum and migration

3.1 General political developments

Elections in the Federal Republic of Germany

No national elections were held in Germany in 2010. State elections took place in one Land, North-Rhine Westphalia, on 9 May 2010. With roughly 17.9 million inhabitants, North-Rhine Westphalia is the most populous German state. The Christian Democrats (Christlich Demokratische Union, CDU) gained a majority, at 34.6% of the vote. At 34.5%, the social democrats (Sozialdemokratische Partei Deutschlands, SPD) were only marginally behind them. Alliance 90/The Greens reached 12.1%, the liberals (Freie Demokratische Partei, FDP) 6.7% and The Left 5.6%.²²

On 14 July 2010, Hannelore Kraft (SPD) was elected the new prime minister of North-Rhine Westphalia; she succeeded Jürgen Rüttgers (CDU). She heads a minority government formed by the SPD and the Greens. The reigning CDU/FDP coalition lost power.

Changes in political responsibilities for migration and asylum issues

Following the state elections and the formation of the government in North-Rhine Westphalia, there were some changes at the state's Ministry for Home Affairs and Local Government (Ministerium für Inneres und Kommunales, MIK). Ralf Jäger (SPD) took over as minister from Ingo Wolf (FDP). Some departmental responsibilities were shifted. The former Ministry for Intergenerational Relations, Women, Family and Integration (Ministerium für Generationen, Frauen, Familie und Integration, MGFFI) was reorganised. Responsibility for integration policies now lies with the Ministry for Labour, Integration and Social Affairs (Ministerium für Arbeit, Integration und Soziales, MAIS), which is led by Guntram Schneider (SPD).

In the city state of Hamburg, the Senator of the Interior was replaced in August 2010 when incumbent Christoph Ahlhaus (CDU) was elected First Mayor. The new Senator of the Interior is Heino Vahldieck (CDU). Hamburg chaired the regular conference of the state Ministers and Senators of the Interior in 2010.

In Brandenburg, Dietmar Woidke (SPD) took over as minister of the Interior from Rainer Speer (SPD) when the latter stepped down in October 2010. In Hessen, Boris Rhein (CDU) became minister of the Interior at the end of August. His predecessor Volker Bouffier (CDU) was elected prime minister of Hessen. In Thuringia, Jörg Geibert (CDU) succeeded Peter Michael Huber (CDU) as minister of the Interior in December 2010, as Huber was appointed a judge at the German Constitutional Court and left the office.

²² See the state returning officer of North-Rhine Westphalia: [Landtagswahl 2010, Endgültige Ergebnisse in Nordrhein-Westfalen](#) ("State elections 2010, final results for North-Rhine Westphalia"), Düsseldorf.

3.2 Main policy and/or legislative debates

Debate on skilled labour shortages and economic migration

Since summer 2010, there has been a heated discussion about the lack of skilled labour and possible ways to make it easier for foreign workers to move to Germany. The debate focused on what type of skilled workers and how many of them were needed and on different concepts to defuse or mitigate the situation. In this context the EMN study on “Satisfying Labour Demand through Migration in Germany”²³ released at the beginning of October was quoted by a number of media.

The debate was triggered because economic research institutions as well as industrial and employer associations warned about the existing scarcity skilled labour in Germany, which they forecast to become even more serious. For example, the Financial Times Deutschland wrote that, by 2015, almost three million (highly qualified) employees will be lacking.²⁴ According to an estimate by the Institute for Employment Research (IAB) the total number of workers will decline by 1.8 million by 2020.²⁵ The Deutscher Industrie- und Handelskammertag (DIHK) warned that the lack of qualified labour might lead to annual output losses of EUR 25 billion.²⁶

A number of organisations and experts believe that excessively complicated or bureaucratic rules concerning the immigration of foreign workers are one reason for the lack of skilled labour. One example is the obligation to check whether German workers are available for the job²⁷, which is set out in section 39 of the Residence Act. The media also pointed out in some cases that it is too difficult or even impossible to have foreign diplomas and qualifications recognised in Germany. Some argued that German immigration law should be geared more towards the labour-market situation. The warnings and the critique were an issue for the Federal Government, too, but the Minister of the Interior, the Minister of Labour and Social Affairs and the Economics Minister took different views concerning the necessity of legal reforms. Some of the measures that were discussed with a view to encouraging labour-market-related immigration were a reduction of the required minimum income²⁸ for highly qualified workers, a less restrictive handling or abolishment of the check whether German workers are available and the introduction of a points system similar to that used in Anglo-Saxon countries.²⁹ There was unanimity on the issue that the recognition of foreign qualifications should be regulated better and in a more binding way.³⁰

²³ Parusel, Bernd/Schneider Jan (2010): [Satisfying Labour Demand through Migration in Germany](#), Research Study in the framework of the European Migration Network (EMN), Nuremberg: BAMF.

²⁴ See „[Wie Deutschland Spezialisten abschreckt](#)“ (“How Germany puts off specialists”), Financial Times Deutschland, 4 August 2010.

²⁵ See „[Sprachbarriere schreckt Fachkräfte](#)“ (“Language barrier puts off specialists”), Handelsblatt, 4 August 2010.

²⁶ See [DIHK press release](#), 27 September 2010.

²⁷ This means that, before a residence permit for working purposes is granted, the Federal Employment Agency checks whether German or other EU citizens, who have the same right as Germans to work, are available for the job. Critics claim that foreign workers might have to wait for months before being granted a work permit – and that might keep them from applying for jobs in Germany in the first place. The Federal Employment Agency designates a time frame of one to four weeks. (See „[Wie Deutschland Spezialisten abschreckt](#)“ (“How Germany puts off specialists”), Financial Times Deutschland, 4 August 2010.)

²⁸ See the parliamentary group of Alliance90/The Greens, draft of a law to amend the Residence Act, [BT printed paper 17/3039](#), 28 September 2010. Pursuant to section 19 of the Residence Act (“Settlement permit for highly qualified foreigners”), specialists and executive personnel have to touch a minimum salary to be immediately granted a settlement permit. This minimum salary is linked to the earnings ceiling of the general pension insurance system. In 2010, it was EUR 66,000.

²⁹ See for example a position paper of the Ministry of Economics and Technology: [Deutschlands Zukunft sichern – Fachkräfte gewinnen](#) (“Secure Germany’s future – attract skilled labour”), Berlin, August 2010; „[Von der Leyen will mehr qualifizierte Zuwanderer](#)“ (“Von der Leyen calling for more highly qualified immigrants”), Der Tagesspiegel, 27 November 2010; motion „[Fachkräfteeinwanderung durch ein Punktesystem regeln](#)“ (“Regulate specialist immigration by a points system”), [BT printed paper 17/3862](#), 23 November 2011.

³⁰ See the [press release](#) „Dem Fachkräftemangel begegnen“ (“Counteracting the lack of skilled labour”), Federal Government, 18 October 2010; „[Zuwanderung spaltet die Koalition](#)“ (“Immigration a contentious issue for the coalition”), Die Welt, 20 October 2010, p. 2.

Towards the end of the reporting period (2010) deliberations within the Federal Government coalition over the necessity for regulations pertaining to the immigration of skilled workers were ongoing. However, the lack of skilled labour and immigration steering will probably remain important issues in the public debate for some time to come.

Debate on immigration and integration

In summer 2010 a heated debate started about the integration of immigrants and migrants and rules for new immigration. In some aspects, this debate spilled over to the discussion about the lack of skilled labour and immigration steering mentioned above. The discussion about integration went beyond the government and parliament and spread to the mass media and the broad public. It was triggered by the controversial book “Deutschland schafft sich ab” (“Germany abolishes itself”, published on 30 August 2010) by social democratic politician and then member of the Bundesbank board Thilo Sarrazin as well as by statements by the author at press conferences, talk shows and public readings.³¹ The author believes that a combination of a declining overall number of births, growing lower social strata and immigration from largely Muslim countries will have a negative effect on Germany. Representatives of the political, the media and the academic communities criticised Sarrazin³² very clearly, accusing him of supporting biological determinism, racism, social Darwinism, eugenics and pseudo-scientific conclusions. The SPD executive committee started party expulsion proceedings against him. The Executive Board of Deutsche Bundesbank asked for Sarrazin’s dismissal.³³

Following the book’s release, both the public and experts discussed different aspects of immigration and integration policy. These included existing integration support, the treatment of persons who refuse to integrate themselves into society, the role of Islam in Germany, multi-culturalism and the possibility to prevent immigration from certain cultures.³⁴ So far, the debate has not led to concrete legislative steps or changes to the current legal situation.

3.3 Broader developments in asylum and migration and institutional developments

„Alliance for Labour“

As foreseen in its action programme “Contribution of Labour Migration to Safeguard the Stock of Skilled Professionals in Germany” of 16 July 2008³⁵, the Federal Government convened an alliance to advise the Federal Government concerning the demand for labour (the “alliance for labour”) in spring 2009. The alliance was chaired by then Minister of Labour and Social Affairs Olaf Scholz (SPD). The alliance for labour is to provide a long-term platform for an open dialogue about the demand for labour in Germany; it is maintained by the new Federal Government in the 17th legislative period. The alliance’s task is to make statements on the current and future development of the demand for and supply of labour in Germany, broken down by sectors, regions and qualification. Moreover, concrete

³¹ Sarrazin, Thilo (2010): *Deutschland schafft sich ab*, Munich: Deutsche Verlags-Anstalt.

³² See for example Naika Foroutan (ed.) (2011): [Sarrazins Thesen auf dem Prüfstand. Ein empirischer Gegenentwurf zu Thilo Sarrazins Thesen zu Muslimen in Deutschland](#) (“Checking Sarrazin’s ideas: An empirical counterproposal to Thilo Sarrazin’s ideas on Muslims in Germany”), Humboldt-Universität zu Berlin.

³³ See [„Bundesbank fürchtet schweren Imageschaden“](#) (“Bundesbank concerned about major reputational damage”), stern.de, 30 August 2010.

³⁴ See [„Merkel erklärt Multikulti für gescheitert“](#) (“Merkel says multiculturalism has failed”), spiegel.de, 16 October 2010.

³⁵ See [Annual Policy Report 2008](#), p. 13.

bottlenecks in the supply of qualified labour are to be presented and the effects of demographic changes on the labour market in Germany are to be analysed in detail. In addition, the participants are to advise the Federal Government with regard to decisions on controlling migration adequate to the labour market.

In 2010, the Federal Ministry of Labour and Social Affairs attempted to shift the focus of the Alliance and anchor it better in the regions. In order to facilitate better support and networking opportunities as well as the establishment of regional groups, initiatives and projects the Federal Ministry of Labour and Social Affairs will set up a service centre for all issues around securing labour. This service centre is to become the central point of contact for regional actors and provide them with advice and support. Moreover, work on the development of tools to determine the current and expected labour demand (“job monitoring”) was continued with support from the scientific community.³⁶

German Islam Conference

On 17 May 2010, the first plenary meeting of the German Islam Conference (DIK) took place; it was convened by the Ministry of the Interior. The conference will be based on the decisions and experiences made during its first phase in the years 2006 – 2009 and will continue the work it started then.³⁷ In its current phase the DIK will focus on the practical implementation and further development of the results of the first phase and pursue the goal of improving Muslim participation in Germany. The plenary meeting adopted an eleven-page working programme for the next three years until the end of the legislative period. It is to promote structural and social integration and includes the following issues:

- promoting institutionalised cooperation and integration-related projects;
- promoting equality between the sexes;
- preventing extremism, radicalisation and social polarisation.

In the framework of promoting institutionalised cooperation and integration-related projects, a model concept for training imams is to be developed. Additional studies will be made to obtain valid and representative data on Muslim communities and clerics. In order to promote equality between the sexes Muslim women are to be encouraged and supported to take part in society. A study will research men’s and women’s rights and freedoms to act with a particular focus on the role of religious beliefs in comparison to other, milieu-specific influencing factors. Concerning the third issue, the conference will discuss and set up approaches to prevent islamophobia, anti-semitism and religious extremism, with a particular focus on young people.

Advisory council on integration

In the framework of developing the National Integration Plan (NIP) from an overall concept for integration policy to an action plan with clearly defined and measurable goals, the Federal Government plans to continue and strengthen the dialogue in good faith between the state and society, in particular migrants, in the 17th legislative period. The Bundestag is to be included in this procedure. A federal advisory council on integration with 32 members is to be established (Federal Integration Council). Its main task will be to support and advise the Federal Government Commissioner for Migration, Refu-

³⁶ See http://www.bmas.de/portal/32698/2010__09__10__allianz__fuer__arbeitskraefte.html.

³⁷ The coalition agreement between the CDU, the CSU and the FDP signed in 2009 says that the DIK, which was established by then Federal Minister of the Interior Wolfgang Schäuble in 2006, is to be continued in the 17th legislative period, and Schäuble’s successor, Minister of the Interior Thomas de Maizière, announced that the work of the DIK should be continued and deepened. See the DIK website www.deutsche-islam-konferenz.de.

gees and Integration (currently Minister of State Maria Böhmer (CDU) in her work. The Commissioner will chair the committee. The 32 members will include up to ten representatives of largely nationwide migrant organisations as well as one representative of each of the top associations of the local authorities, the foundations, the Federal Employment Service, the top employer associations, the German Confederation of Trade Unions, the German top sport organisations and charitable organisations. Moreover, the advisory council will include up to six representatives of churches and religious communities, three representatives of academia and five individuals. The establishment of the council was prepared in 2010, and it was presented to the public on 13 January 2011.³⁸

Considerations to optimise security authorities

An independent working group established in April 2010 by the Ministry of the Interior (commission for the evaluation of the security agencies) presented its report on 9 December. The commission, which was headed by former Berlin senator of the interior Eckart Werthebach, recommended, among other things, to continue with the reforms of the Federal Police and the Federal Criminal Police Office (BKA) started in 2005 and to merge the organisation of the authorities. Similar to the structure of the police authorities in the Federal States, only one police agency would take care of investigative and preventative police duties. As European integration continues and EU-internal borders become less and less important, the report proposes preparing an overall concept for Germany and reviewing the tasks of the Federal Police and the customs authorities in the Schengen border area.³⁹ While some state ministers of the interior and the Federal Criminal Police Office were skeptical about the reform proposals, the then Federal Minister of the Interior, de Maizière, said the proposals of the Werthebach commission were worth pursuing. A decision about a reform of the security agency organisation is to be taken in spring 2011; in order to prepare any relevant measures the Ministry of the Interior established a project group on the evaluation of the security agencies on 5 January 2011. This project group includes representatives of the Ministry of Finance as well the heads of the Federal Criminal Police Office, the Federal Police and the German Customs Investigation Bureau.⁴⁰

³⁸ See Federal Press Office: [Press release no. 05 “Böhmer: ‘Unser Dialogprinzip hat sich bewährt’”](#) (“Böhmer: ‘Our dialogue principle has worked well’”), Berlin, 13 January 2011.

³⁹ [“Kooperative Sicherheit – Die Sonderpolizeien des Bundes im föderalen Staat”](#) (“Co-operative security – the Federal Polices in a Federal State”), report and recommendation of the commission for the evaluation of the security agencies, Berlin, 9 December 2010.

⁴⁰ See [interview with Federal Minister of the Interior Dr. Thomas de Maizière](#), Deutschlandfunk, 11 January 2011; [“Projektgruppe Evaluierung der Sicherheitsbehörden”](#) (“Project group for the evaluation of the security authorities”), press release of the Federal Ministry of the Interior, 5 January 2011.

4 Legal immigration and integration

4.1 Economic migration

4.1.1 Specific context

With regard to economic migration and steering labour migration, the Federal Government aims to meet the expected increase in skilled-labour demand mainly by intensifying training for domestic skilled labour, increasing the participation rate of women and older citizens and improving the qualifications of migrants who already live in Germany. Against the background of demographic developments, globalisation and the structural shift in the economy towards knowledge and research-intensive industries and services it is likely that it will become more difficult in the medium to long term to meet the increasing demand for skilled and highly qualified labour solely by using the labour force already available in Germany. Thus, the Federal Government's action programme "Labour migration's contribution to securing the skilled labour base in Germany" of July 2008 postulates that the expected trend towards a smaller supply of skilled labour and higher quantitative and qualitative demand may lead to bottlenecks, particularly on the labour market for university graduates. This development might start to weigh on growth as early as from the mid-2010s. International competition for highly qualified labour is likely to intensify further. Immigration regulations should therefore become more attractive to improve Germany's position.⁴¹

The immigration law, which entered into force on 1 January 2005 and whose core element is the Residence Act, created the legal foundation for immigration that is based on the German society's acceptance and integration capacities and takes into account economic and labour-market interests. The Residence Act and the Employment Ordinance, which govern third-country nationals' access to the German labour market, have been revised several times in order to meet the requirements of Germany as a business location better. The Residence Act and the Employment Ordinance open up numerous ways for permanent or temporary residence of third-country nationals in Germany for working purposes, for example for foreign seasonal workers, contract work employees, university graduates and skilled workers, highly qualified workers, researchers and self-employed.⁴² While numerous amendments took place in 2009, not least due to the Labour Migration Control Act⁴³, no major amendments entered into force in 2010. However, changes to the Residence Act – among other things in order to transpose EU directives – were prepared for 2011.

4.1.2 Developments within the national perspective

Recognition of qualifications acquired abroad

On 9 December 2009 the Federal Cabinet decided to assess and, if possible, recognise the different qualifications of immigrants in a simple procedure. A procedure was to be developed that was more

⁴¹ See Federal Ministry of the Interior /Federal Ministry of Labour and Social Affairs (2008): Federal Action Programme: Labour migration's contribution to securing the skilled labour base in Germany, Berlin: BMI/BMAS; Parusel, Bernd/Schneider, Jan (2010): [Satisfying Labour Demand through Migration in Germany](#), Research Study in the framework of the European Migration Network (EMN), Nuremberg: BAMF.

⁴² For a detailed overview of the ways of access for third-country nationals for the purpose of working see Parusel, Bernd/Schneider, Jan (2010): [Satisfying Labour Demand through Migration in Germany](#), Research Study in the framework of the European Migration Network (EMN), Nuremberg: BAMF.

⁴³ See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 25 et seq.

transparent, more comprehensive and more individualised than the existing rules. In this context, the government laid the ground for the project to improve the assessment and recognition of professional qualifications and degrees obtained abroad. The government points out that, so far, recognition procedures are quite intransparent, as different authorities are responsible in every Federal State and procedures are not uniform. The aim of the legal changes is to exploit the labour-market potential of immigrants better.

The cornerstones of the programme are as follows:

- Applicants are to have a legal claim on a recognition procedure for all professional qualifications obtained abroad. At the moment, only ethnic German repatriates and EU citizens who pursue a regulated profession⁴⁴ have a right to such a procedure. In the future, the equivalence of foreign and German qualifications will need to be assessed in an individual recognition procedure, which will result in full or partial recognition. If the applicants' professional know-how is insufficient in comparison to the German qualification, they will be informed about additional, supplementary training opportunities, which they may pursue even while working.
- Uniform criteria for recognition procedures are to be developed in order to increase the transparency of the procedure. The uniform criteria are to be developed in cooperation with the states and the business community.
- The recognition procedure will not to be linked to the applicants' residence status or their nationality.⁴⁵

The Federal Ministry of Education and Research (BMBF) presented a concrete legal draft at the integration summit in autumn 2010. The BMBF proposes a time framework for the recognition procedure. The decision on the full or partial recognition of a professional qualification is to be taken within three months at most.⁴⁶ The law will probably be adopted in 2011. Independent of the legislative plans, the skilled-labour initiative "Deutschlands Zukunft sichern – Fachkräfte gewinnen" ("Secure Germany's future – attract skilled labour")⁴⁷ of the Federal Ministry of Economics and Technology (BMWi, see also chapter 3.2) started to build an information portal. It is to make recognition of foreign qualifications easier and inform the responsible authorities about qualifications which have already been found to be equivalent to German qualifications. The information portal is addressed mainly to the chambers of industry, of trade and of commerce.⁴⁸

Migration of seasonal workers

When the Labour Migration Control Act entered into force on 1 January 2009, the maximum period for which unqualified or low-qualified seasonal workers may be employed in Germany was extended from four to six months per year. In 2010, 293,711 foreign seasonal workers (including 7,716 assistants for showpeople) worked in Germany according to the Federal Employment Agency. This is a

⁴⁴ In Germany, there are roughly 60 regulated professions (such as doctors, teachers etc). A list of such professions in Germany can be found on the website [Anabin - Informationssystem zur Anerkennung ausländischer Berufsabschlüsse](#) (click on "Zuständige Stellen in Deutschland").

⁴⁵ For more information see "Eckpunkte der Bundesregierung: [Verbesserung der Feststellung und Anerkennung von im Ausland erworbenen beruflichen Qualifikationen und Berufsabschlüssen](#)" ("Federal Government cornerstones: Improving the identification and recognition of professional qualifications obtained abroad"), 9 December 2010.

⁴⁶ See [BMBF press release 192/2010](#), 2 November 2010.

⁴⁷ For more information on the skilled-labour initiative see the [press release](#) of the Federal Ministry of Economics and Technology, 31 August 2010, or the ministry's working paper (BMWi: [Deutschlands Zukunft sichern – Fachkräfte gewinnen](#)) ("Secure Germany's future – attract skilled labour").

⁴⁸ See [press release](#) of the Federal Ministry of Economics and Technology, 18 October 2010.

marginal decline from 2009, when 294,828 foreign seasonal workers (including 7,882 assistants for showpeople) were employed in Germany.

Most seasonal workers were Polish nationals (177,010), followed by Romanians (101,820). While the number of Polish seasonal workers in Germany has declined markedly since 2004, that of Romanians has steadily risen since 1998. In 2004, 286,623 Polish and only 27,190 Romanian seasonal workers came to Germany.

4.1.3 Developments from the EU perspective

Transposing the “Blue Card” directive

The Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card Directive) has to be transposed into national law by 19 June 2011. Germany started to take the necessary legislative steps in 2010.

4.2 Family reunification

4.2.1 Specific context

In order to protect marriage and the family within the meaning of Art 6 of the Basic Law foreigners may be permitted to join their family relatives in Germany. Entry and residence of foreign spouses and children of persons residing in Germany is regulated in sections 27-36 of the Residence Act.

Subsequent immigration of spouses

The Federal Government and the German Bundestag believe that a basic knowledge of German obtained ahead of the entry to Germany will make it easier for the spouse to get their bearings in Germany. That is why, since September 2007, foreign spouses of third-country nationals and Germans who live in Germany have been required to prove a basic knowledge of the language to obtain a residence permit. Proof of a basic knowledge of German is waived for nationals of certain countries.

4.2.2 Developments within the national perspective

Introduction of a right to return and protection of victims of forced marriage

On 27 October 2010, the Federal Government presented a bill to fight forced marriages, to protect the victims of forced marriages better and to change a number of other residence and asylum law regulations. The main reason for the bill was that forced marriages had become a serious problem that had increasingly come into the public's focus in the last few years. More and more victims, in particular young female migrants, talked publicly about their experiences. To protect the victims the bill aims to intensify the fight against forced marriages and to increase public awareness of the injustice of such behaviour.

Among other things, the bill foresees creating an independent right of return for foreign victims of forced marriages who held a residence title in Germany, were forced to marry abroad and were prevented to return afterwards. Residence titles usually become void if the holder does not reside in Germany for six months in a row. So far, a renewed granting of a residence title pursuant to section 37(2) AufenthG ("Right of return") often failed due to the requirement that the returnee has to secure his or her own livelihood. The new bill foresees an independent right of return even in case that the livelihood is not secure, provided it appears certain that the returning spouse will be (re)integrated in Germany. Moreover, the bill foresees improvements in the legal position of victims of forced marriages who have been legally resident in Germany for at least eight years and have gone to school for at least six years. Their residence titles are to become void not after six months, but only after ten years of non-residence in Germany.⁴⁹ The bill will be discussed in parliament in 2011.

4.2.3 Developments from the EU perspective

Language requirements for subsequent immigration of spouses

In the framework of the transposition of the EU Family Reunification Directive (Directive 2003/86/EC of 22 September 2003) into national law important the Residence Act was amended, and a number of important new rules on family reunification were included. Since 2007, spouses will be granted a residence permit (provided that the other requirements of the Residence Act are met) if they are able to communicate in German on a basic level at least (section 30(1) no. 2 AufenthG). The language requirement also applies if a German spouse is joined. Visa applicants have to prove their language skills (required: level A1 of the Common European Framework of Reference for Languages (CEFR)) at the German embassy abroad before coming to Germany. The goal of this requirement is to make integration in Germany easier and prevent forced marriages.

In September 2010 the Federal Government concluded an assessment of the provisions concerning spouses' language skill proofs introduced in 2007. It found that the new rules were useful for integration. The government believes that the decline in the number of visa granted for family reunification purposes in Q4 2007 is due to the fact that applicants had to prepare for the language tests once the language requirement had been introduced. This view is confirmed by the global, continuous increase in the number of visa granted for family reunification purposes since Q1 2008. While fewer visa for family reunification purposes are being granted than before the introduction of the language require-

⁴⁹ See [Entwurf eines Gesetzes zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheiraten sowie zur Änderung weiterer aufenthalts- und asylrechtlichen Vorschriften](#), ("Draft of a law on fighting forced marriages and improving the protection of the victims of forced marriages as well as amending other residence and asylum provisions"), [BT printed paper 17/4401](#), 13 January 2011.

ment, the number of visa granted for family reunification purposes had been declining for years. It fell from 64,000 in 2002 to only 39,585 in 2006.⁵⁰

According to a decision of the Federal Administrative Court of 30 March 2010, the language test does not run counter to the protection of marriage and the family granted by the Basic Law and EU law.⁵¹ This decision refers to the case that the applicant was unable to learn sufficient German within an adequate period of time for reasons that are not their fault and that there is no acceptable way to reunify the family abroad. In that case, the balance of interests required by the constitution can be brought about by other means, such as granting a temporary residence title for the purpose of learning the language (section 16(5) AufenthG). The Federal Government announced that it would carefully take into account in practice both this and another decision by the Federal Administrative Court announced for the near future and, in view of the law's intention to promote integration and prevent forced marriages, examine for which group of persons the balance of interests is necessary.⁵²

Dealing with fictitious marriages

The Federal Government intends to intensify its efforts to prevent fake marriages. A bill adopted in October by the Federal Cabinet (see chapter 4.2.2) foresees that the minimum period of a marriage between foreign and German citizens which entitles the foreign partner to an independent right of residence in case of a divorce is to be increased from two to three years. The goal is to reduce the incentive to enter into a fake marriage and to increase the chances of detecting fake marriages before an independent right of residence comes into existence.

4.3 Other legal migration

4.3.1 Specific context

Besides migration for work purposes, for family reunification or for humanitarian reasons, there are other reasons for legal immigration for certain groups, such as Jewish immigrants from the former Soviet Union or ethnic German repatriates. Immigration for educational purposes is important, too.

Foreign students

Before they come to Germany, foreign students have to obtain a visa from the responsible German embassy. Students from European Union member states and from some other countries are exempt from this rule.⁵³ A study visa usually requires the offer of a place at a German university or a recognised certificate of access to university education, proof that the student holds sufficient funds for the first year of study and proof of healthcare insurance. Moreover, a visa usually is granted only if the applicant can provide proof of sufficient knowledge of the course language at the time of application.

⁵⁰ See [BT printed paper 17/3090](#), p. 31.

⁵¹ See the decision of the first senate of 30 March 2010, [BVerwG 1 C 8.09](#); Anne-Kathrin Fricke (2010): [Neuere Rechtsprechung des Bundesverwaltungsgerichts zum Ausländerrecht](#) ("Latest foreigners-law-related decisions of the Federal Administrative Court"), in: ZAR 30 No. 8, p. 253-259, p. 254 et seq.

⁵² See [BT printed paper 17/3090](#), p. 36.

⁵³ These are Iceland, Norway, Switzerland and Liechtenstein; students from Monaco, San Marino, Andorra, Honduras, Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the US and – pursuant to bilateral agreements – from Brazil and El Salvador are exempt, too.

Visa for foreign students are granted in a fast-track procedure. In principle, the visa requires express consent by the foreigners' authority that is responsible for the student's future place of residence. If, however, this authority does not send an objection to the embassy where the application for the visa was made within three weeks and two working days, its consent is assumed to be given and the visa will be granted. In some cases, no consent is necessary.⁵⁴

Once foreign students have entered Germany, they will be granted a residence permit. The purpose of study also includes language and other courses which prepare students for their main course of study. Students may work for 90 days or 180 half-days per year or hold minor student jobs. Since the Immigration Act's entry into force on 1 January 2005 the residence permit may be prolonged for one year after graduation in order to enable students to find adequate employment. The goal of this provision is to enable qualified foreign students to remain in Germany once they have graduated.⁵⁵

Resettlement procedure for Jewish immigrants from the successor states to the former Soviet Union

The resettlement of Jewish immigrants in Germany has to be seen against the background of Germany's historic responsibilities. While the reception procedure focused on strengthening Jewish communities in Germany, on humanitarian aspects and on family reunification until the entry into force of the Immigration Act, a key additional goal of the new procedure (as amended between 2005 and 2007) is to steer immigration while taking into account integration capacities in the states and at the local level. The integration of the immigrants into the Jewish communities and into German society is to be improved. Preconditions such as a favourable integration outlook, a basic knowledge of German and reception in a Jewish community are to help reach this goal. The humanitarian goals are to be met by exceptions for the victims of National Socialism, taking into account family reunification and rules for cases of hardship.

The reception procedure for Jewish immigrants is the first to use a scorecard for integration forecasts. The reception procedure was evaluated in 2008. This assessment has led to some changes to the procedure.⁵⁶ Since 2003, immigration from the successor states of the former Soviet Union to Germany has declined palpably. While 2,502 persons came to Germany in 2007, their number dropped to 1,436 in 2008 and 1,088 in 2009.

Resettlement procedure for ethnic German repatriates

Since 1950, more than five million repatriates including their families have come to Germany. They are one of the largest groups of immigrants. This is due less to current immigration by ethnic German repatriates than to high immigration figures during the 1990s. In 1990, 397,073 ethnic German repatriates came to Germany. Between 1991 and 1995, more than 200,000 of them entered Germany each year. Afterwards, the influx of ethnic German repatriates declined considerably. Today, only a few thousand ethnic German repatriates or their families enter Germany each year. Their number amounted to 3,360 in 2009 and to 4,362 in 2008.

⁵⁴ See Federal Ministry of the Interior/Federal Office for Migration and Refugees (2010): [Migrationsbericht 2009](#) (Migration Report 2009) by the Federal Office for Migration and Refugees commissioned by the Federal Government, Nuremberg: BAMF, p. 58.

⁵⁵ The number of foreign students at German universities has risen steadily. 165,994 foreign students were registered in the winter semester 1998/1999. Ten years later (in the winter semester 2008/2009) their number had risen to 239,143.

⁵⁶ See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 29 et seq.

4.3.2 Developments within the national perspective

Foreign students enrolled 2009/2010

Overall, 244,775 foreign students studied at German universities in the winter semester 2009/2010. This is the highest figure so far. 74.0% of the foreign students did not obtain their university qualification in Germany. In the winter semester 2008/2009 239,143 foreign students studied in Germany, 75.4% of which did not obtain their university qualification in Germany. Most foreign students registered in the winter semester 2009/2010 came from China (22,779), ahead of the Russian Federation (9,764), Poland (8,467) and Bulgaria (8,266).

The Federal Government regards the high number of foreign students as positive and believes that this group of migrants offers the largest and most interesting potential for labour-market immigration.⁵⁷

Jewish immigrants in 2010

The number of Jewish immigrants from the former Soviet Union once again fell slightly in 2010. 1,015 immigrants were received.

Ethnic German repatriates in 2010

The number of ethnic German repatriates fell once again in 2010. 2,350 repatriates were received, most of them from the former Soviet Union (2,297).

4.3.3 Developments from the EU perspective

As the reception procedures for ethnic German repatriates, Jewish immigrants from the former Soviet Union and other legal migrants that are not covered by other sections of this report do not form part of the responsibilities of the European Union, there are no EU-related developments.

4.4 Integration

4.4.1 Specific context

The Residence Act, which entered into force on 1 January 2005, anchored integration support in German law for the first time. In Germany, integration is a task for which authorities at all levels – the federal, the state and the local level – are responsible. The first integration summit in 2006 and the National Integration Plan identified a number of key fields of action for integration support, such as encouraging the use of German right from the beginning, improving labour-market chances, realising equal opportunities and strengthening intercultural competences. In their coalition agreement for the 17th legislative period, the current government parties pursue the goal of facilitating the integration of immigrants in the meaning of providing equal opportunities and actual participation in all fields, in particular in social, economic and cultural life. This requires both acceptance by the German society and the willingness to integrate on the part of migrants.⁵⁸

⁵⁷ See [BT plenary proceedings 17/83](#), 19 January 2011, p. 9293 (Thomas de Maizière, Federal Minister of the Interior).

⁵⁸ See [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 105.

Integration courses

For a successful integration, all legal migrants are offered a basic integration package (integration course) to support their own integration efforts.⁵⁹ At the moment, there are seven different binding national concepts for different target groups. Each of them is geared to the relevant target group in terms of content and pace of learning. The integration courses include a language and an orientation course. The orientation course is to make immigrants understand the organisation of the German state. In particular, the importance of the free, democratic organisation of the state, the party system, Germany's federal structure as well as the concepts of a social state, equal opportunities, tolerance and religious freedom are to be explained. The goal is to make it easier for immigrants to find their place in their new society and to provide identification opportunities. Successful language lessons are proven by a language test. Since the beginning of 2009, a uniform test has been used for the orientation courses, so successful course participation can be verified by a standardised, comparable procedure. The language course terminates with a newly developed, scaled language test ("Deutsch-Test für Zuwanderer", level A2 – B1 CEFR) as of 1 July 2009.

Initial counselling for adult immigrants (Migrationsberatung für erwachsene Zuwanderer; MBE)

Since 1 January 2005, counselling for adult immigrants has been done by MBE. The focus is on giving professional individual advice in order to start and support the integration process. The counselling helps to determine the immigrants' skills, to devise an individual support plan together with them and to accompany them throughout the implementation. Migration counselling for adult immigrants is a responsibility of the Federal Office for Migration and Refugees, which has created a nationwide network of advisory offices.

Projects to foster immigrant integration

The Federal Government supports projects for the social integration of migrants who hold a permanent residence permit. These community-oriented, local projects focus on integration in the local community, preventative measures (prevention of violence and addiction, conflict management) and strengthening existing skills, intercultural competence, parenting competences and social competence by providing recreational activities with the goal of improving the mutual acceptance and respect between Germans and immigrants. The community-oriented project work attaches much importance to networking and cooperation between all actors included in the integration process and to the support of community initiatives.

4.4.2 Developments within the national perspective

Language promotion in child care facilities

On 2 November 2010 Federal Minister of Family Affairs Kristina Schröder presented the initiative "Offensive Frühe Chancen" ("offensive for early opportunities"). The goal is to better support small children who need extra language lessons. Between 2011 and 2014, the Federal Government plans to provide up to 4,000 kindergartens with additional funds to spend on language and integration lessons.

⁵⁹ The preconditions for entitlement to attend an integration course are set out in sections 44 and 44a AufenthG. In addition to recent immigrants, migrants who have been living in Germany for some time may be entitled or even obliged to attend such a course; the latter is the case if they receive social-security benefits. They pay only a contribution of EUR 1 per lesson; courses are free for those who receive social-security benefits or for ethnic German resettlers (see the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 31).

Roughly EUR 400 million will be earmarked for this purpose. Each of the selected kindergartens will receive up to EUR 25,000 to employ an additional part-time language teacher. The initiative is directed mainly at children below 3 years of age who need linguistic support. At the presentation of the project the minister said that the initiative was addressed not to only migrant children, but also to German children from the lower social strata. According to the ministry, the percentage of children who need extra language lessons is between 13% and 56%, depending on the Federal State. The extent of language lessons offered in the Federal States differs strongly. The Federal Ministry of Family Affairs will allocate the funds pursuant to cooperation agreements, which will be signed with the Federal States.⁶⁰

Federal integration programme

On 8 September 2010, the then Federal Minister of the Interior, Thomas de Maizière, and then President of the Federal Office of Migration and Refugees (BAMF), Albert Schmid, presented the nationwide integration programme.⁶¹ It focuses on getting an overview of the numerous types of integration support offered by the Federal Government, the state and the local governments and private providers, to identify areas to be improved and to develop strategies for such improvements. The Federal Ministry of the Interior has asked the BAMF to draft the integration programme. Specialists from politics, administration, practical integration support and research have jointly identified urgent problems and developed concrete recommendations and strategies for their resolution. At the presentation of the programme the Minister said that overcoming language problems was the key integration challenge.⁶²

The nationwide integration programme was developed pursuant to section 45 sentence 2 AufenthaltG and contributes to the implementation of the National Integration Plan (NIP) of 2007.⁶³ The integration programme includes extensive descriptions of the situation and proposals to increase the efficiency of the individual activities and measures. It provides an important basis for further considerations and activities in the area of integration policy and will shape the future actions of key providers and actors.

The NIP has identified the following elements as key issues and made relevant recommendations:

- Early and comprehensive German lessons for children and young people who learn German as a second language
- Promoting opportunities and chances of education for migrants
- Promoting social participation and active commitment
- Developing standards for the evaluation of integration support measures.

The key issues of the integration programme are to be included in the action plan for the implementation of the National Integration Plan and implemented in this framework.

⁶⁰ See "[Bund unterstützt Sprachförderung in Brennpunkt-Kitas](#)", ("Federal government to support language lessons in problem areas"), press release of the Federal Government, 2 November 2010, Berlin.

⁶¹ Federal Ministry of the Interior/Federal Office for Migration and Refugees (2010): [Bundesweites Integrationsprogramm, Angebote der Integrationsförderung in Deutschland – Empfehlungen zu ihrer Weiterentwicklung](#) ("Federal Integration Programme, Integration promotion in Germany – recommendations for further development"), Berlin/Nuremberg: BMI/BAMF.

⁶² See "[Bundesinnenminister stellt bundesweites Integrationsprogramm vor](#)" ("Federal Minister of the Interior presents nationwide integration programme"), press release of the Federal Ministry of the Interior, 8 September 2010, Berlin.

⁶³ See [Annual Policy Report 2008](#), p. 14.

Introduction of integration agreements

The coalition agreement foresees the introduction of integration agreements in order to increase commitment levels in individual integration assistance. These integration agreements will contain commitments for measures to be taken for a successful integration into German society and the labour market, which will be reviewed regularly. The Federal Government targets both new migrants and those who have lived in Germany for some time. The agreements will focus on language skills, education and professional training. In addition, emphasis will be placed on information and advice about the services offered by the government and community organisations. Individual consultation, such as “Integrationslotsen” (integration facilitators), is to be included as well.

Integration agreements are to be introduced gradually. The responses by different social groups, migrant associations and researchers to the government initiative varied from basic agreement to rejection.⁶⁴ In 2010, the Federal Government Commissioner for Migration, Refugees and Integration worked on developing the concept for an integration agreement. She did so in close cooperation with the responsible federal ministries and with associations and migrant organisations. The Commissioner will test and evaluate the instrument in a pilot project. Once the pilot project is completed, a decision on a nationwide introduction will be taken.⁶⁵

Fourth integration summit

On 3 November 2010 the Fourth Integration Summit took place in Berlin; it was convened by the Chancellor. About 120 participants were present, among them Chancellor Angela Merkel, several members of the Cabinet, several state prime ministers, 35 representatives of migrant organisations and representatives from business, research, media, the arts, sports, the trade unions and religious communities. The Integration Summit marks the beginning of the work on an action plan for the implementation of the National Integration Plan (NIP). The NIP is based on a provision of the coalition agreement, which says that the NIP is to be developed into an action plan with clearly defined and monitorable goals. The action plan will focus on issues of the NIP, develop them and redefine the emphasis in so-called dialogue forums. Chancellor Angela Merkel summarised the goal of future actions after the Integration Summit by saying that measures should be made reviewable and that a clear timetable should be created. The ultimate goal should be an action plan which would permit to identify successes and failures easily.⁶⁶

The Federal Government also aims at increasing the number of migrants in public service. Public-sector employers should particularly address young migrants; a fixed quota is not intended.⁶⁷ The Federal Government Commissioner for Migration, Refugees and Integration also intends to introduce individual integration plans and agreements for new migrants (see above).⁶⁸

⁶⁴ See [“Integrationsvertrag soll kommen”](#), (“Integration agreement to be introduced”), SWR International, 23 November 2009.

⁶⁵ See [8. Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland](#) (“8th report on the situation of foreign nationals living in Germany”), Berlin, June 2010, p. 259-260.

⁶⁶ See the [press statements](#) concerning the Fourth Integration Summit of the Federal Government, 3 November 2010 at Berlin.

⁶⁷ See “Vorarbeiten im Kanzleramt” (“Preparations at the Chancellery”), Die Welt, 4 November 2011; [“Merkel: Integration überprüfbar machen”](#) (“Merkel: Make integration reviews possible”), faz.net, 3 November 2010.

⁶⁸ See [“Nett lächeln, endlos ankündigen”](#) (“Nice smile, continued announcements”), spiegel online, 3 November 2010.

Integration Act in Berlin

Berlin was the first German Federal State to adopt an Integration Act. On 9 December 2010, the Senate passed the “Gesetz zur Regelung von Partizipation und Integration in Berlin” (Act on Participation and Integration in Berlin; PartIntG).⁶⁹ It says that Berlin aims to give migrants an opportunity of equal participation in all areas of social life and abolish any and all discrimination or preferential treatment (see section 1(1) PartIntG). Integration is regarded as an overarching social process, whose success depends on the commitment of all citizens. Successful integration requires both participation offers to migrants and migrants’ willingness and efforts to integrate themselves. The type and extent of participation opportunities and integration support will depend on the legal status and the requirements of migrants (section 1(2) PartIntG).

Under the new Act, integration becomes an obligatory task for the administration of Berlin. The act creates a legal basis for Berlin’s integration policy institutions, such as the state advisory council on integration and migration and the integration commissioners of the district administrations and the senate. These institutions are to ensure an improved representation and participation of migrants in bodies and commissions and, in turn, active participation in political decision-making procedures.

Under the new law, the administration of Berlin is obliged to provide training and qualification measures for its employees to ensure intercultural competency. Intercultural competencies will be one criterion for the qualification and work performance review of public-sector employees conducted at the time of employment and at each promotion. Moreover, the number of migrant employees is to be increased according to their share in Berlin’s population. Target quota are to be introduced and reviewed annually. Job adverts will have to include a sentence that says that applications by migrants who meet the criteria are expressly desired.

The new act amends a number of existing state laws in order to facilitate integration in a number of areas. For example, the Berlin universities are to shape their public-relations efforts in such a way that underrepresented parts of the population are encouraged to study. The Burial Act was amended so that shroud burials are permitted in Berlin (see Article X PartIntG). In the Holiday Act (Article VI, section 2(1)) the term “church” holidays was replaced by “religious” holidays.

Even before the act in Berlin entered into force on 29 December 2010 the North-Rhine Westphalian government announced that it planned to present an Integration Act in spring 2011.⁷⁰

Further development of integration indicators

At the Federal State level, work on the development of indicators for nationwide integration monitoring⁷¹, which started in June 2008, was continued in 2010. In June 2009, the state integration ministers and senators had approved a set of indicators proposed by the working group. The states used the set of indicators provided by the Federal Government to select the indicators to be used in the Federal States and tested this set of indicators in practice during a pilot project in February 2010. Bavaria, Berlin, Brandenburg, Hessen, Lower Saxony, North Rhine-Westphalia and Rhineland-Palatinate participated in that project. Based on the pilot project, a cross-state evaluation of the current integration

⁶⁹ <http://www.wkdis.de/downloads/gvbl/frei/32-10-s549-s572-28122010.pdf>.

⁷⁰ See Integration Minister Guntram Schneider and state secretary Zülfiye Kaykin: “[Wir schaffen in unserem Integrationsgesetz nachhaltige Strukturen](#)” (“We will create sustainable structures by our Intergration Act”), press release, 24 September 2010.

⁷¹ See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 34.

status of migrants is being prepared.⁷² The cross-state evaluation is to be updated every two years from now on.

4.4.3 Developments from the EU perspective

Germany regularly exchanges information on good practices and recent developments with the other Member States in the network of National Contact Points for integration. Following a conference on the development of integration indicators at the European level organised by Germany and held in June 2009 at Berlin and another meeting in December 2009 at Malmö, concrete proposals for indicators were made in a memorandum.⁷³ In 2010, Germany participated in the fourth European Ministerial Conference on Integration, which was organised by the Spanish Presidency at Saragossa on 15 and 16 April. Among other things, the participants agreed to conduct a pilot project on the introduction of indicators at the European level on the basis of the Swedish memorandum. The proposed indicators are to be tested and examined for their information content. German integration monitoring procedures (see above) have triggered much interest among the European Member States. Representatives of Italy and Hungary have asked the Federal Government Commissioner about the preparatory work and the implementation of the integration monitoring.⁷⁴

4.5 Citizenship and naturalisation

4.5.1 Specific context

Foreigners who have been residing legally in Germany for some time are entitled to German citizenship, provided they meet the general naturalisation requirements. These are set out in the German Nationality Act. Citizenship according to the place of birth (*ius soli*) was introduced on 1 January 2000. That means that children of foreigners who are born in Germany acquire German citizenship at birth, provided that at least one parent has been legally and permanently resident in Germany for eight years and holds a permanent residence title. However, the children will have to choose between their German and their foreign nationality once they become legal adults. They can take until their 23rd birthday to take a final decision.

Foreigners can obtain German citizenship by naturalisation. They have to meet a number of criteria at the time of application to be entitled to naturalisation. These include a permanent right of residence and eight (in special cases six) years of legal residence in Germany, a secure livelihood and no criminal record. In principle, naturalisation of third-country nationals requires them to waive their former nationality; however, there are numerous legal exceptions, for example for people from countries that generally refuse denaturalisation.⁷⁵ EU and Swiss citizens may keep their nationality.

⁷² See [8. Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland](#) (“8th report on the situation of foreign nationals living in Germany”), Berlin, June 2010, p. 63.

⁷³ See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 34.

⁷⁴ See [8. Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland](#) (“8th report on the situation of foreign nationals living in Germany”), Berlin, June 2010, p. 62.

⁷⁵ For information on the exceptions see Federal Ministry of the Interior/Federal Office for Migration and Refugees (2010): [Migrationsbericht 2009](#) (Migration Report 2009) the Federal Office for Migration and Refugees commissioned by the Federal Government, Nuremberg: BAMF, p. 228.

Naturalisation tests

Naturalisation requires a sufficient knowledge of German. Since 1 September 2008, applicants for naturalisation have also had to prove their knowledge of the German legal and social system and the way of life in Germany in a uniform naturalisation test. The Federal States offer naturalisation courses to prepare for this test.

Between 2000 and 2009, 1,332,646 foreigners took advantage of their right to naturalisation. In 2007, 113,030 foreigners were naturalised; in 2008, the figure was only 94,470, which is equivalent to a decline of 16.4% year-on-year. In 2009, the number was slightly up, to 96,122.

4.5.2 Developments within the national perspective

The debate on the future of the “option provision”⁷⁶, which was conducted in the two preceding years, continued in 2010. Both the Bundestag and the Bundesrat discussed nationality law bills, particularly concerning the abolition of the obligatory choice for people who were born in Germany and held two nationalities. A bill sponsored by the Federal States of Berlin and Bremen provided for the abolishment of section 29 of the Nationality Act, so that children might retain their two nationalities. However, the Bundesrat rejected the bill.⁷⁷ Similar bills of the parliamentary groups of the SPD and of Alliance 90/The Greens in the Bundestag were sent to the committees after the first debate.⁷⁸

The coalition agreement for the 17th legislative period foreshadows that the first cases are to be “examined to determine if there is a need for changes in procedural law or substantive law, and if so, then suitable proposals should be drawn up”. The Federal Ministry of the Interior has asked the Federal Office for Migration and Refugees to conduct an empirical study on the obligatory choice from the vantage point of those affected by the rule.⁷⁹

4.5.3 Developments from the EU perspective

As citizenship and naturalisation issues are primarily the responsibility of the Member States, there are no EU-related developments in this context (for information on the connection between Union citizenship and a repeal of German citizenship see chapter 10.2). The only important point is that, despite the principle that multiple citizenships should be avoided, EU and Swiss citizens do not have to give up their original citizenship for naturalisation in Germany any more since 28 August 2007, provided that they meet the preconditions for naturalisation.⁸⁰

⁷⁶ See [Annual Policy Report 2009](#), p. 16.

⁷⁷ See “Entwurf eines Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes” (“Draft of a law to amend the Nationality Act”), [BR printed paper 142/10](#), 12 March 2010; [BR plenary protocol 869](#), 7 May 2010, p. 116A - 117D.

⁷⁸ See “Entwurf eines Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes” (“Draft of a law to amend the Nationality Act”), [BR printed paper 17/773](#), 23 February 2010; [BR plenary protocol 17/25](#), 26 February 2010, p. 2230A-2238C; motion “Ausgrenzung beenden – Einbürgerungen umfassend erleichtern” (“Stop exclusion – make naturalisation easier”), [BT printed paper 17/2351](#), 30 June 2010 and “Entwurf eines Gesetzes zur Änderung des Staatsangehörigkeitsrechts” (“Draft of a law to amend the Nationality Act”), [BT printed paper 17/3411](#), 26 October 2010; [BT plenary protocol 17/68](#), 28 October 2010, p. 7228C-7255D

⁷⁹ See [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 109.; [“Migrations- und Integrationsforschung”](#) (“Migration and integration research”), Annual Report 2009 of the research group at the Federal Office for Migration and Refugees, Nuremberg 2010, p. 9 and 68.

⁸⁰ See section 12(2) of the Nationality Act.

5 Illegal immigration and return

5.1 Illegal immigration

5.1.1 Specific context

In the field of illegal migration Germany uses preventative measures and migration control measures, such as the visa procedure or securing external borders, measures to promote returns or enforce the obligation to leave the country by removals and refoulement and pragmatic solutions in the case of persons illegally present, whose obligation to leave the country cannot be enforced.

Third-country nationals may only enter Germany or reside in the country if they hold a recognised and valid passport or substitute passport, provided that they are not exempt from this requirement on the grounds of an ordinance. Moreover, foreigners usually need a residence permit for entry and residence. If foreigners enter German territory even though they do not hold the necessary passport or substitute passport or the necessary residence permit or if they are not permitted to enter the country, such entry is deemed to be illegal. If foreigners do not meet the entry criteria listed above, their residence in Germany is illegal, too. Residence also becomes illegal if the foreigners do not meet the relevant residence conditions any more (for example due to overstaying). In these cases foreigners are regularly required to leave the country. Residence titles may become invalid if they run out, if a condition subsequent occurs, if the residence titles are repealed, if the foreigners are expelled or if the foreigners leave the country for a reason which is not, by nature, temporary.

Foreigners who have entered the country without permission and who neither apply for asylum nor are detained and removed will be allocated to the Federal States. Responsibility for this allocation rests with the Federal Office for Migration and Refugees. Irregular entry and residence are criminal offences and may be punished by fees or prison sentences. Inciting others to illegal entry or residence, helping them to illegally enter or reside in Germany, accepting money or promises of money for such acts and acting repeatedly or in favour of several foreigners in such a way are criminal offences, too. However, this does not apply to assistance for humanitarian reasons.

Illegal entry is often effected with the help of commercial and criminal human trafficking networks.⁸¹ The German system of migration control and prevention of illegal migration consists of external controls (for example via border controls) and a system of internal residence permit controls. In addition, there are data exchange mechanisms, workplace controls, close cooperation among the authorities and information obligations of public-sector institutions.

The fight against illegal migration includes not only responses, but also preventative action, for example in the framework of the visa procedure. One aspect of the visa procedure is to prevent irregular immigration.⁸² For example, the embassy has to check during the visa granting procedure whether the applicant is willing to return to his home country before the visa becomes invalid. The embassy will have to examine whether the applicant's individual situation suggests that the probability of a return to the home country during the term of the visa is sufficiently high. The applicant's potential willingness to return is evident, for example, from his or her roots in the home country, such as family or eco-

⁸¹ See [Migrationsbericht 2008](#) (Migration Report 2008) by the Federal Office for Migration and Refugees commissioned by the Federal Government, Nuremberg: BAMF, p. 181.

⁸² See [BT printed paper 17/2250](#), 8 July 2010, p. 7.

conomic relationships. The “willingness to return” examination is based on Article 21 of the Visa Code.⁸³

5.1.2 Developments within the national perspective

Perspective to legally reside for youth and young adults with temporary leave to remain (Duldung)

Illegal migration also includes the treatment of third-country nationals who do not have a right to reside in Germany, but whose deportation has been suspended because the obligation to leave the country or the deportation cannot be enforced. The past EMN Annual Policy Reports also dealt with the “right to remain” and the “rules for old cases” for foreigners whose deportation had been suspended for years.⁸⁴ At the meeting of the regular conference of the state ministers and senators of the interior of 4 December 2009 agreement was reached on a follow-up rule for sunseting temporary residence permits in the framework of the rules for old cases (“residence permits on trial”).⁸⁵ The rules for old cases applied to people whose deportation had been suspended for years, who had already made integration efforts and who held a job; their goal was to enable this group of foreigners to obtain a residence title.

In November 2010, the state ministers and senators of the interior used the 191th meeting of the conference to look at the residence and integration outlook of young adults whose deportation had been suspended. They supported the introduction of an independent, secure residence outlook, provided that the teenagers and young adults meet certain preconditions (in particular school and professional training) and there is a good chance of their being integrated in German society in view of their past integration efforts. The teenagers’ parents may obtain a residence title if they have made sufficient integration efforts and can largely secure the livelihood of the family by their own efforts.⁸⁶ In a decision of 17 December 2010, the Bundesrat recommended to follow the conference’s proposal.⁸⁷

Denials in the visa procedure

In mid-July 2010 the Federal Government released figures on rejected visa applications for the first time. While the overall rejection ratio has risen considerably during the last few years, it varies considerably depending on the applicants’ country of origin. The figures were released as an answer to a minor interpellation in the Bundestag. The government’s answer⁸⁸ showed that the rejection quota rose from roughly 6% to about 10% between 2000 and 2009.

Rejection rates are highest in the embassies in African countries. In 2009, the rejection rates in the embassies in Nigeria, Cameroon, Ghana, Senegal and the Congo amounted to 34% - 54%. Visa applications from Turkey were rejected about twice as often (20%) as the average of all embassies.⁸⁹

⁸³ See [BT printed paper 17/2250](#), 8 July 2010, p. 6.

⁸⁴ See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 15 and 35-36.

⁸⁵ Collected decisions for release of the [189th meeting of the regular conference of state ministers and senators of the interior](#) on 4 December 2009 at Bremen.

⁸⁶ Collection of the decisions of the [191th meeting of the regular conference of state ministers and senators of the interior](#) on 18/19 December 2009 at Bremen, p. 31.

⁸⁷ See [BR printed paper 704/10](#) (decision), 17 December 2010.

⁸⁸ See [BT printed paper 17/2250](#), 8 July 2010.

⁸⁹ See [BT printed paper 17/2250](#) of 8 July 2010, p. 9-14; see also [Newsletter Migration und Bevölkerung](#) (“Newsletter Migration and Population”), no. 7, September 2010.

5.1.3 Developments from the EU perspective

Further harmonisation of the visa procedure

On 5 April 2010, key provisions of the Regulation (EC) no. 810/2009 of 13 July 2009 on a Community Code on Visas entered into force. The Visa Code Regulation will be applied directly by the Schengen Member States; it serves to create a uniform procedure for granting Schengen and airport transit visas by the Schengen Member States. The Visa Code does not cover the national procedures for long-term residence visas (immigration).

Compared to the Common Consular Instructions (CCI), which were in place until 5 April 2010, the Visa Code introduced the following major changes to the visa procedure:

- The visa categories “B” (transit visas) and “D+C” (“hybrid visas”) were abolished. Transit visas are now granted as “C” type visas, which include a notation “transit”. “Hybrid visas” became obsolete on 5 April, as national category “D” visas now entitle the holder to a short-term residence in the whole Schengen area.
- Refusals have to include a justification and instructions about available legal remedies as of 5 April 2011. The German embassies have been meeting this requirement since 5 April 2010 under a voluntary commitment.
- From 5 April 2011, the Schengen Member States will be obliged to give refused visa applicants the opportunity to start legal proceedings. German law already permits in principle to start proceedings against a visa refusal. Exceptions are the refusal of a tourist visa or of a visa at the border (section 83(1) of the Residence Act).
- The airport transit visa obligation was further harmonised by the Visa Code.

Visa applicants will find it easier to be granted annual or multi-annual visas and – once the VIS goes live – it will become necessary in fewer cases to file the application personally with the visa office.⁹⁰

5.2 Return

5.2.1 Specific context

Returns and return promotion are integral elements of migration steering in Germany. Voluntary returns are preferred, as they are regarded as a more humane and cost-effective way to return third-country nationals who are obliged to leave the country. During the past decades the Federal Government has concluded more than 30 bilateral readmission agreements.⁹¹ The most recent agreements were negotiated with Syria and the Republic of Kosovo. The readmission agreement with Syria, which was signed on 14 July 2008 and entered into force on 3 January 2009, was criticised by a number of refugee and human-rights organisations, largely on the grounds of the difficult situation of

⁹⁰ See [BT printed paper 17/2250](#), 8 July 2010, p. 2-3.

⁹¹ A list of all readmission agreements can be found on the website of the Federal Ministry of the Interior: <http://www.bmi.bund.de/cae/servlet/contentblob/151414/publicationFile/17366/RueckkehrFluechtlinge.pdf>.

stateless Kurds in Syria.⁹² The opposition parties in the Bundestag also called for a suspension or termination of the agreement, which the government rejected.⁹³

Voluntary returns have been supported by the national REAG/GARP programmes (“Reintegration and Emigration Programme for Asylum-Seekers in Germany” and “Government Assisted Repatriation Programme”) since 1979. These programmes are primarily directed at rejected asylum seekers; they offer travel expense and start-up assistance for the reintegration of persons in countries which are particularly important to Germany in terms of migration policy. The volume of the start-up assistance depends on the country of origin. The assistance and the list of the countries of origin that are important in terms of migration policy are reviewed annually by the Federal Ministry of the Interior and the Federal States on the basis of the latest political developments. In order to create better incentives for voluntary returns the assistance amounts were hiked at the beginning of 2009 (REAG travel assistance was doubled and GARP start-up assistance was increased by 50% or 60%, depending on the target country). Since then, travel assistance amounts to EUR 200 for adults and EUR 100 for children aged less than 12; the start-up assistance may amount to up to EUR 750 is granted for adults and up to EUR 375 for children.

Moreover, the temporary return project “URA 2” to the Republic of Kosovo started on 1 January 2009. The project is promoted by the Federal Government and the states Baden-Württemberg, Lower Saxony, North Rhine-Westphalia and – since 2010 – Saxony-Anhalt. It aims at offering returnees reintegration assistance and at securing long-term reintegration. Moreover, the overall return management is to be improved further.

It is in the framework of the projects to support and implement the EU mobility partnership with Georgia (see chapter 9.2) that the Federal Government – via the Federal Office for Migration and Refugees – participates in the project “Targeted Initiative Georgia – Support Reintegration of Georgian returning migrants and the implementation of EU-Georgia Readmission agreement”. The project focuses on the implementation of the readmission agreement and the return and reintegration of 1,800 migrants. The Federal Office for Migration and Refugees has taken responsibility for one of the three main components of the project, namely returnee reintegration, and has made the necessary preparations in 2010. Among other things, two Georgian social workers will be employed to conduct advisory talks with the returnees. Moreover, an agreement with a psychologist will be concluded, who may be called upon if necessary. The measures identified as necessary by these talks will be implemented with the help of existing training centres, hospitals and job agencies. 5% of the returnees are to receive support to establish their own business. Moreover, trainings and explanation events will be held with local authorities. The opening conference for the project is scheduled in Tiflis for spring 2011.

Other projects are the programme for returning highly-qualified workers financed by the Federal Ministry for Economic Cooperation and Development (BMZ) and a project to strengthen the diaspora in the framework of the mobility partnership with the Republic of Moldova. The programme for returning highly-qualified workers targets the professional integration of returning university graduates and skilled, experienced workers from developing countries, emerging markets and transformation countries who have gained professional qualifications in Germany. In the framework of the project to strengthen the diaspora a job fair jointly organised by Germany and the Republic of Moldova gave

⁹² See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 39.

⁹³ See [BT printed paper 17/525](#) of 26 January 2010; [BT printed paper 17/68](#) of 25 November 2009; see [BT printed paper 17/237](#) of 15 December 2009; Deutscher Bundestag: [Abschiebungen bleiben möglich](#) (“Removals remain possible”), 28 January 2010.

Moldovian companies an opportunity to meet highly qualified workers with professional or educational experience in Germany and thus create incentives for voluntary returns.

5.2.2 Developments within the national perspective

The list of countries of origin that are important in terms of migration policy and receive particular assistance under the voluntary return REAG/GARP programmes was reviewed. In 2010, returning nationals of 34 countries were permitted to touch start-up reintegration assistance.⁹⁴

In 2010, almost 4,500 voluntary returns were supported by the REAG/GARP programmes according to preliminary figures. This is an increase by more than 44% from the preceding year.⁹⁵ In 2009, the number of REAG/GARP-assisted returns was already up considerably from 2008 (3,107 vs. 2,799 returnees). This confirms a turnaround in the trend: between 2000 and 2008 the figures had steadily declined.

5.2.3 Developments from the EU perspective

Transposition of directive 2008/115/EC

The Member States had to transpose the EU Directive 2008/115/EC (Return Directive) into national law until the end of 2010. According legal steps have been prepared (see chapter 10).

Readmission agreement with Kosovo

The signing of and the support for the signing of readmission agreements are key elements of the German return policy and serve to establish constructive cooperation with third countries. Germany participated constructively in the agreements on EU readmission agreements.

At the bilateral level the Federal Republic of Germany and the Republic of Kosovo signed a bilateral readmission agreement⁹⁶ on 14 April 2010, which entered into force on 1 September 2010. It aims above all to improve the good and successful cooperation in fighting illegal migration. In particular, conditions and technical details of a readmission, including removal procedures and removal implementation, were agreed upon.

At the time of the signing of the agreement, roughly 14,000 Kosovars lived in Germany who were obliged to leave the country. Mass removals are not intended. Rather, a gradual removal is planned on the basis of the agreement.⁹⁷ Germany promised the Republic of Kosovo to take care that the readmission requests observe a balance between the different ethnic groups. About two-thirds of the Kosovars who live in Germany and are obliged to return are Roma.

⁹⁴ These are: Egypt, Ethiopia, Algeria, Bangladesh, China, Côte d'Ivoire, Eritrea, Ghana, Guinea, India, Jordan, Lebanon, Morocco, Nigeria, Pakistan, Sierra Leone, Somalia, Syria, Vietnam (in each case: EUR 300 or EUR 150 for children); Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Iran, the Republic of Kosovo (excluding Serbs and Roma), Macedonia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia, Turkey and Ukraine (in each case: EUR 400 or EUR 200 for children); Afghanistan, Iraq and the Republic of Kosovo (only Serbs and Roma ethnic minorities) (in each case: EUR 750 or EUR 375 for children).

⁹⁵ This increase can be attributed almost exclusively to short-term resident Serbian and Macedonian nationals, who have entered the Federal Republic without a visa obligation (see below).

⁹⁶ For the details of the bilateral readmission agreement see the announcement of the agreement between the government of the Federal Republic of Germany and the government of the Republic of Kosovo on the reception and transfer of persons (readmission agreement) of 21 April 2010 ([BGBl II, p. 259](#)).

⁹⁷ See press release [„Deutschland und Kosovo unterzeichnen Rückübernahme- und Sicherheitsabkommen“](#) (“Germany and Kosovo sign readmission and security agreement”), Federal Ministry of the Interior, 14 April 2010.

The content of the agreement was criticised by the opposition parties as well as human-rights and refugee organisations. In particular, removals of ethnic Roma were criticised with the argument that members of this minority were subject to inadequate living conditions in Kosovo. The critics said that the Roma did not have access to elementary living opportunities and were subject to massive discrimination.⁹⁸

The Federal Government said that the Kosovar government did not practice social and economic discrimination against Roma. Their difficult living circumstances were not due to ethnic discrimination, but largely to the low level of education of many jobless Roma. However, the Federal Government agrees that the social and economic situation of Roma is difficult and comparable to that of ethnic Albanians.⁹⁹ An opinion by the Federal Office for Migration and Refugees (BAMF) given in the framework of a public hearing of the Internal Affairs Committee of the Bundestag on 23 June 2010 emphasised that Roma were not subject to asylum-relevant persecution – such as political persecution – in Kosovo and therefore did not need individual protection against removal as a rule.¹⁰⁰

Between 1 January and 31 August 2010 (the day before the agreement entered into force) the Federal States reported a total of 1,724 readmission requests (removal orders) to the two coordination offices at the Regierungspräsidium (district administration) Karlsruhe and the central foreigners' authority at Bielefeld. Until the end of September 2010, a total of 451 persons were removed to Kosovo, of which 113 were Roma. The removals took place mainly via air, with the responsible German authorities conducting seven flights with the participation of Frontex and other Member States.¹⁰¹

Under an ordinance of the state Ministry for Home Affairs and Local Government enacted on 1 December 2010, North Rhine-Westphalia suspended forced returns of ethnic Roma, Ashkali and Egyptians to the Republic of Serbia and the Republic of Kosovo until 31 March 2011. This measure was justified with the tense economic and social situation in these countries, as described in the reports of the Federal Foreign Office. The state argued that it was impossible to exclude that this situation might result in particular hardship during the winter months.

The BAMF continued the “URA 2” return project for returnees to Kosovo.¹⁰² Since 1 January 2010, Saxony-Anhalt has participated alongside Baden-Württemberg, Lower Saxony and North Rhine-Westphalia. The project aims at making the return easier for returnees and at ensuring their long-term integration. Among other things, the project includes comprehensive social and, if necessary, psychological assistance. Returnees from the participating states may, moreover, claim immediate assistance in getting a home, furniture or necessary medical treatment and may participate in professional training or labour-market measures and start-up training.

Implementation protocol supplementing the EU readmission agreement with Moldova

An implementation protocol between the Federal Republic of Germany and the government of the Republic of Moldova related to the agreement of 10 October 2007 between the European Union and the Republic of Moldova on the readmission of illegally resident persons entered into force on 13 De-

⁹⁸ See “Tausende Roma vor Abschiebung in den Kosovo” (“Thousands of Roma to be removed to Kosovo”), Die Tageszeitung, 16 April 2010.

⁹⁹ See [BT printed paper 17/2089](#), 14 June 2010.

¹⁰⁰ Deutscher Bundestag - Innenausschuss: [Ausschussdrucksache 17\(4\)70 F](#) (German Bundestag – Internal Affairs Committee: Committee printed paper 17(4)70 F) of 23 June 2010

¹⁰¹ See [BT printed paper 17/3328](#), 19 October 2010.

¹⁰² See the [Annual Policy Report 2009](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 39/40.

ember 2010. Among other things, the implementation protocol details the responsible authorities and transfer methods foreseen in the EU agreement.

Restrictions on REAG/GARP support for returnees from visa-free third countries

Nationals of European countries which are not EU Member states and who may enter Germany without a visa will not receive any start-up and travel assistance any more from October 2010. Only travel expenses (pure travel or petrol expenses) may be covered, with no cash changing hands. In particular, this rule applies to Serbian, Macedonian and Montenegrin nationals who entered Germany without a visa after 19 December 2009 and for persons from Bosnia-Herzegovina and Albania who entered Germany visa-free after 15 December 2010. The new rule was introduced due to the significant increase in the number of asylum applicants after the introduction of visa exemptions for Serbia and Macedonia as well as Montenegro and the suspicion that persons from the former two countries are fraudulently trying to obtain money (see chapter 7.3).

Support and practical cooperation on the EU level

Germany has sent experts to the Frontex project “Attica”, which is currently being implemented in eastern Greece. The project aims at supporting Greece in identifying, procuring travel documents for and removing illegally resident third-country nationals to their home countries. Another focus is on developing national removal procedures, passing on specialist knowledge and improving cooperation with third countries.¹⁰³

Until October 2010, Germany participated in 13 joint return operations and organised three flights. All flights were coordinated and sometimes co-financed by Frontex. This type of cooperation has become standard. In 2010, the cooperation with other Member States in procuring travel documents for the voyage to the home countries continued only to a limited extent, as the third countries regularly did not give their approval. Moreover, a regular exchange of information about national measures, new developments and problems or successes in the area of removals takes place via Frontex.

Return Fund

The Member States had to provide an assessment of the supported projects for the implementation of the European Integration Fund and the European Return Fund by 30 June 2010. The responsible authority had placed an evaluation contract with an external consultant in March 2010.

In 2009, a project supported by the Return Fund was terminated at the federal level. For 2010, another project funded by the Return Fund was designed and implemented by the Federal Police in cooperation with the Federal States and selected African countries (such as Benin and Nigeria). The project aims at improving operative cooperation, making the procurement of travel documents easier and conducting removals.¹⁰⁴ For 2011 – 2013, other projects funded by the Return Fund have been planned and partially filed with the responsible authority (the Federal Office for Migration and Refugees). The goal is to improve operative cooperation (i.e. to increase the number of identified persons and to remove those who are obliged to leave the country).

¹⁰³ See [FRONTEX-General Report 2009](#), p. 27.

¹⁰⁴ See European Return fund, annual programme 2010, Federal Office for Migration and Refugees, p. 11 et seq.

5.3 Actions against human trafficking

5.3.1 Specific context

Since 1999 the Federal Criminal Police Office (BKA) has been preparing an annual National Situation Report on Human Trafficking. It summarises the latest facts and any developments in human trafficking for the purpose of sexual or labour exploitation. Human trafficking for the purpose of sexual or labour exploitation (see sections 232 and 233 of the German Criminal Code, respectively) are different crimes, which need to be fought in different ways (for example in the area of gaining suspicion and evidence).

The National Situation Report 2010 on Human Trafficking reports on the situation in 2009. In 2009, 523 investigation procedures on trafficking in human beings for the purpose of sexual exploitation were concluded. The number of procedures was up by about 11% year-on-year. The number of registered victims (710) rose 5% in comparison to 2008. Most victims were female (87%).

In line with developments seen in the preceding years, most victims (85.8%) came from Europe in 2009. Most were German (24.8%), Romanian (19.9%) or Bulgarian (19.3%) nationals. About 20% were minors. One key difficulty in dealing with suspected victims from Romania and Bulgaria is that they are not willing to cooperate with the police or with advisory institutions. Victims often go back on their initial statements, in particular if they voluntarily return to their home countries during the investigation. That makes it difficult or impossible to investigate the crimes in court. Victims may refuse to act as witnesses and return to their home country for a number of reasons. They are often afraid that cooperating with the police might lead to their or their families' being punished by the human traffickers and their network, which often extends to the home countries. Moreover, victims are only granted a residence permit for a temporary stay (section 25(4a) AufenthaltG) in return for their willingness to give statement. That means that they regularly have to return to their country of origin once the procedure in court is over.

The prosecuting authorities are increasingly faced with the phenomenon that Bulgarians or Romanians may be legally resident in Germany and offer prostitution as a free-lance service. While, according to the Federal Criminal Police Office, their situation often suggests a case of human trafficking, this is difficult to prove.

The number of suspects of trafficking in human beings (777) fell slightly in year-on-year terms (-1%). German citizens formed the largest group of suspects (35.9%). Bulgarian, Romanian and Turkish nationals made up the majority of foreign suspects.

According to the Federal Criminal Police Office, the overall trend in human trafficking for the purpose of sexual exploitation has not changed much over the last few years. There is still a large percentage of undetected crimes. One of the main challenges is that it is difficult to identify victims of human trafficking and to respond to new ways of perpetration.

95 out of 710 victims of human trafficking for the purpose of sexual exploitation were illegally resident in Germany in 2009. The prosecuting authorities are faced with the new challenge that most foreign victims come from EU Member States and may be legally resident in Germany.¹⁰⁵

Since 2005, human trafficking for the purpose of labour exploitation has been a criminal offence, too. In 2009, the police criminal statistics registered a total of 24 cases. The number of cases dropped once again, by 11% (2008: 27 cases). Only seven cases of assistance in human trafficking for the purpose

¹⁰⁵ See Federal Criminal Police Office (2010): [Human Trafficking – National Situation Report 2009](#), press-release summary, Wiesbaden: BKA, p.12.

of labour exploitation pursuant to section 233a of the German Criminal Code were registered in the statistics (2008: 3 cases).¹⁰⁶

Pursuant to section 25(4a) of the Residence Act, a foreigner who has been the victim of human trafficking for the purpose of sexual or labour exploitation or assistance in human trafficking may be granted a residence permit for a temporary stay. This requires that the temporary stay of the foreigner is considered appropriate in connection with criminal proceedings, that the foreigner has broken off contact to the persons accused of having committed the criminal offence **and** that the foreigner has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence. This also applies to foreigners who are enforcably required to leave the country. This provision implements the Victim Protection Directive of the EU of 29 April 2004.¹⁰⁷ On 30 June 2010, 47 holders of a residence permit granted under section 25(4a) of the Residence Act lived in Germany.¹⁰⁸

5.3.2 Developments within the national perspective

Impact of the Prostitution Act on human trafficking

At the 191st meeting of the Standing Conference of the Federal States' Ministers and Senators of the Interior on 19 November 2010, the participants discussed the effects of the Prostitution Act¹⁰⁹ on the fight against human trafficking. This act, which entered into force in 2002, aimed at improving the legal and social situation of prostitutes and fighting prostitution-related crime. The conference found that human trafficking for the purpose of sexual exploitation was a crime that went often undetected and that a disproportionate number of street prostitutes came from eastern Europe. The conference saw a need for action, for example in the areas of introducing obligatory licences for all types of places of prostitution and offering prostitution services and an obligatory disclosure of prostitution at places of prostitution. They asked the Federal Government to take a new initiative for a law to regulate prostitution, which should go beyond the provisions of the Prostitution Act.¹¹⁰ Such an initiative might have a favourable impact on criminal proceedings against human trafficking for the purpose of sexual exploitation.

5.3.3 Developments from the EU perspective

European and international police cooperation

The European Pact on Immigration and Asylum says on the issue of human trafficking that cooperation with the countries of origin and transit is to be stepped up in order to fight illegal immigration in the framework of the overall approach on migration. In particular, an ambitious policy on police and judicial cooperation is to be pursued in order to combat international criminal organisations engaged

¹⁰⁶ See Federal Criminal Police Office (2010): [Human Trafficking – National Situation Report 2009](#), press-release summary, Wiesbaden: BKA, p.11.

¹⁰⁷ See Parusel, Bernd (2010): [The Granting of Non-EU Harmonised Protection Statuses in Germany](#). Study II/2009 in the framework of the European Migration Network (EMN). Working Paper 30, Nuremberg: Federal Office for Migration and Refugees, p. 23.

¹⁰⁸ Source: Central Register of Foreign Nationals.

¹⁰⁹ In 2002 the Prostitution Act entered into force. Its goal was to effect the urgently needed improvement in the legal and social situation of prostitutes and to fight prostitution-related crimes.

¹¹⁰ Collection of the decisions of the [191th meeting of the regular conference of state ministers and senators of the interior](#) on 18/19 December 2009 at Bremen, p. 17-18. In 2007, the [Report by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on the Impact of the Act Regulating the Legal Situation of Prostitutes](#) had already shown that prostitutes hardly ever used the possibility of enforcing wage claims in court, that there was no measurable improvement in social protection (not least because the easier ways to enter into employment contracts that are subject to social insurance contributions were rarely used) and that there was no measurable impact on crime. However, the fight against human trafficking and forced prostitution had not become more difficult under the law, in contrast to earlier fears.

in trafficking migrants and in human trafficking and to provide better information to communities under threat so as to avoid the tragedies that can occur, particularly at sea. During the last few years Germany participated actively in EU migration missions to Armenia, South Africa, Belarus, Kenya and Ukraine, the cooperation platform on migration and development in Ethiopia and pilot mobility partnerships with Moldova and Georgia. German police authorities cooperate closely with their foreign peers in the fight against human trafficking. Cooperation with the prosecuting authorities of the European partner countries is particularly important.

Human Trafficking

In December 2010 the European Parliament adopted a Directive on combating human trafficking¹¹¹ which will oblige the EU Member States to become active in the areas of prosecuting human traffickers, protecting victims and acting preventively. Moreover, the Directive sets new punishments for human traffickers and asks the member states to consider punishing those who knowingly accept services provided by victims of human trafficking.

¹¹¹ Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COD/2010/0065).

6 Border control

6.1 Control and surveillance at external borders

6.1.1 Specific context

The external borders of the Federal Republic of Germany are 4,517 kilometres long (3,757 kilometres of land borders to neighbouring countries and 760 kilometres sea borders). Stationary border controls between Germany, Poland and the Czech Republic were abolished on 21 December 2007 and between Germany and Switzerland on 18 December 2008. Since then, the Federal Police has only conducted stationary passport controls at the international airports. There are no regular stationary controls on the land borders, so a refolement of illegally entering foreigners is only possible at the airports. Pursuant to section 15 AufenthG, a refolement can take place only until the foreigner has entered Germany.

The abolishment of the regular land border controls by the Federal and state polices is offset by passport controls in the area near the border, if the situation requires them. Border protection also covers controls at federal railway areas, in trains and at ports. Border protection includes preventing the illegal entry of foreigners, fighting cross-border trafficking in migrants and other cross-border crimes such as human trafficking, car trafficking, drug crimes and document forgeries. After the abolishment of the stationary border controls between Germany, Poland, the Czech Republic and other EU Member States the number of illegal entries to Germany rose at the beginning of 2008. Later on, it fell again. As refusal of entry regularly does not take place any more at the land borders, the total number of refusals in 2008 (7,215) was equivalent to only 14% of the 2001 level (51,054).¹¹²

6.1.2 Developments within the national perspective

While border controls at the external borders of the Schengen area are made under EU law, the procedures at the EU external borders which are not part of the Schengen area are in line the national law of the relevant Member State, within the limits set out by EU law. As Germany is a member of the Schengen area, all border control activities and measures have a European dimension. There are therefore no “developments within the national perspective”.

6.1.3 Developments from the EU perspective

Biometric visas and passports

Germany uses up-to-date document readers and document verification systems to efficiently verify the authenticity of an ID document on the basis of visual and digital features. Moreover, a registered travellers programme (“Automatisierte und biometriegestützte Grenzkontrolle” (“automatised and biometrics-supported border controls”), ABG) and automatic border controls (easyPASS) on the basis of an ePassport are being tested. The biometric feature used for ABG is a picture of the eye iris and, for easyPASS, the picture of the face stored in the electronic passport (ePass). As a result, no preceding registration is necessary for easyPASS. In the future biometric features will increasingly be used in border controls to verify the identity of document-holders.

¹¹² See [Annual Report on Migration and International Protection Statistics 2008](#) of the German National Contact Point of the European Migration Network (EMN), Nuremberg: Federal Office for Migration and Refugees, p. 30.

Uniform design of residence titles for third country nationals

In October 2010 the Federal Government introduced a bill to adapt German law to the [Regulation \(EC\) No. 380/2008](#) of 18 April 2008 to amend [Regulation \(EC\) No. 1030/2002](#) laying down a uniform format for residence permits for third-country nationals into the Bundestag.¹¹³ While the Regulation is to be applied directly by the Member States, national law is to be adapted and made more concrete by the draft bill. In the future, residence titles for third-country nationals shall be executed as separate documents with biometric features (two fingerprints and a photo). Moreover, the draft bill foresees the implementation of the technical standards mentioned in the Regulation to prevent forgeries. Moreover, the draft aims to improve the quality of and accelerate data exchanges in foreigners' affairs and to create the preconditions for setting uniform standards for electronic data exchange formats.

The German Bundestag adopted the bill on 20 January 2011; the Bundesrat assented on 11 February 2011. Essential provisions of the law will come into force on 1 September 2011.

6.2 Cooperation with respect to border control

6.2.1 Developments within the national perspective

While border controls at the external borders of the Schengen area are made under EU law, the procedures at the EU external borders which are not part of the Schengen area are in line the national law of the relevant Member State, within the limits set out by EU law. As Germany is a member of the Schengen area, all border control activities and measures have a European dimension. There are therefore no "developments within the national perspective".

6.2.2 Developments from the EU perspective

Network of border police liaison officials

Since 1992 the Federal Police has deployed border police liaison officials ("grenzpolizeiliche Verbindungsbeamte, GVB) and since 1998 document and visa advisors ("Dokumenten- und Visaberater", DVB) to the EU Member States and other countries. These officers help to prevent illegal migration to Germany and the Schengen area as a whole. The EU External Border Fund supports this work and refines the Federal Police deployment from the EU Commission's coffers.

The Federal Police started to deploy border police liaison officials in 1992. At the beginning only a deployment to EU Member States was intended. By 2007, the Federal Police had established a network of 15 liaison officials. In October 2010 the existing national network of border police liaison officials (GVBs) was extended by a supplementary accreditation of the GVB to Romania for the Republic of Moldova. Moreover, the Federal Police is conducting three community measures supported by the EU External Border Fund. Each of the measures is to take 18 months, and the partners are the Dutch Immigration and Naturalization Service (IND) and the Portuguese Immigration and Borders Service (SEF).

¹¹³ See [BT printed paper 17/3354](#), 21 October 2010, and [BT printed paper 17/4464](#) (decision recommendation and report), 19 January 2011.

German participation in FRONTEX operations

Germany has provided resources to the border protection agency FRONTEX in the framework of the Centralised Record of Available Technical Equipment (CRATE). Federal police officers have been deployed to joint measures and joint operations. For example, in 2010 the Federal Police supported their Greek colleagues in dealing with the increasing refugee influx via the border between Turkey and Greece. Up to 40 German officers participated in these measures. Moreover, the Federal police has been involved in the Attica removal project at the Greek-Turkish border since March 2010 (see chapter 5.2.3).

Visa Information System and biometric visas

Under direction of the Federal Ministry of the Interior, the national preparations for the implementation of the Visa Information System (VIS)¹¹⁴ were continued in 2010. Germany will commence issuing biometric visas during the planned roll-out in Northern Africa, and then continue according to the Commission's plans by regions. A preceding pilot phase is foreseen. The second and third roll-out regions, following Northern Africa, will be the Middle East and the Gulf Region.

¹¹⁴ Common identification system for visa data, see Council Decision [2004/512/EC](#) of 8 June 2004 establishing the Visa Information System (VIS). (The decision to implement the VIS established the VIS as the system to exchange visa data.)

7 International protection including asylum

7.1 Specific context

In terms of numbers, residence for reasons of international law, humanitarian or political reasons is one of the most important residence purposes in Germany. The preconditions for the reception of victims of political persecution and other protection are set out in Art. 16a of the Basic Law, section 60 of the Residence Act and the Asylum Procedure Act. The BAMF decides on asylum applications. Residence during and after the asylum procedure is organised by the state foreigners' authorities.

Since 2005 the transposition of EU Directives and Regulations into German law has shaped the reception of asylum seekers and people looking for protection in Germany. After the Immigration Act entered into force on 1 January 2005 (which already led to major changes by including non-state persecution in the examination procedure for refugee recognition) the implementation of the so-called EU Qualification Directive was an important step towards a common European asylum system.

Despite the trend towards common European protection triggered by the Immigration and the Directive Implementation Acts, there are still several forms of protection which are solely based on national law. They do not compete with, but supplement the European protection system.¹¹⁵

In the last few years the supplementary national laws formed the basis for humanitarian procedures that were separate from the usual asylum procedure. In some cases, the national laws, which exist independently from the European protection system, deal with the treatment of third-country nationals who are already living in Germany but cannot leave the country or be deported. These rules include, for example, the temporary suspension of deportation, the rules for "old cases" for people whose deportation had been suspended for years, the rules on "temporary residence" and residence permits for people who are enforcably required to leave the country.

From the vantage point of the Federal Governments in office during the last few years a common EU asylum and immigration policy makes sense as it permits to steer, monitor and manage international migration better. One goal of European cooperation is to share the burdens related to the reception of refugees and to prevent multiple asylum applications in different EU Member States, illegal immigration and the abuse of asylum law.

Since 1953, more than 3.2 million people have applied for asylum in Germany. More than 2 million of this total have entered the country since 1990. Only about one-quarter of the total number of asylum applications was made during the initial two-thirds of the observation period (i.e. until 1989). The majority (almost three-quarters) was filed during the relatively short period since 1990. The number of applications reached a peak in 1992 (438,191). Since then, the number of asylum applications has declined considerably. Following a low of 19,164 initial applications in 2007, the number has risen again in the past three years. In 2009, 27,649 initial applications were filed – an increase by 25.2% from 2008 (22,085).

¹¹⁵ See Parusel, Bernd (2010): [The Granting of Non-EU Harmonised Protection Statuses in Germany](#). Study II/2009 in the framework of the European Migration Network (EMN). Working Paper 30, Nuremberg: Federal Office for Migration and Refugees.

7.2 Developments within the national perspective

Development of the number of asylum applications and decision practices

In 2010, 41,332 initial asylum applications were filed with the Federal Office for Migration and Refugees (BAMF), i.e. 13,683 more than in 2009 (+49.5%). Following a low in 2007 (19,164 asylum applications), the number of asylum seekers rose for the third year in a row. According to the Federal Ministry of the Interior, this development is largely due to two factors. First, the number of asylum seekers from the main countries of origin – in particular, Afghanistan, Serbia, Iran, Macedonia and Somalia – has risen strongly. Second, the number of asylum seekers from Iraq remained relatively high, at 5,555. In 2009, 6,538 initial asylum applications by Iraqis were registered.

In 2010, the main countries of origin of asylum seekers were Afghanistan (5,905 initial applications), Iraq (5,555), Serbia (4,978), Iran (2,475), Macedonia (2,466), Somalia (2,235), Syria (1,490), Turkey (1,340) and the Russian Federation (1,199).

In terms of the decisions, the overall protection ratio declined markedly, from 33.8% in 2009 to 21.6% in 2010. In 2010, 7,704 persons were recognised as refugees under the Geneva Convention or as entitled to asylum (16.0% of all asylum seekers). Despite the lower protection ratio, almost the same number of persons were accorded a Geneva Convention status as in 2009 (8,115). Moreover, 2,691 persons (5.6%) were granted subsidiary protection (prohibition of deportation pursuant to section 60(2), (3), (5) or (7) AufenthG). While the overall protection ratio is lower than in either 2009, 2008 or 2007, it is higher than in 2006. The decline in the protection ratio is due to the large number of decisions affecting people from Serbia, Macedonia and Kosovo, for which the protection ratio is below 1%. In terms of countries of origin, the protection ratios were highest for asylum seekers from Iraq (52.3%), Iran (52.2%) and Somalia (50.8%). For all three countries of origin, a considerably larger number of applicants were granted refugee protection under the Geneva Convention than subsidiary protection.¹¹⁶

Admission of Iranian Refugees

Currently, following a decision of the Federal Minister of the Interior taken in close agreement with the Federal Foreign Office and the Federal Ministries of the Interior of the German Federal States, about 50 Iranian nationals in need of protection (human rights attorneys, journalists), who have fled abroad, are in the process of being granted residence in Germany on the basis of section 22 clause 2 of the Residence Act („to uphold the political interests of the Federal Republic of Germany“). Admission is made in cooperation with the UNHCR, in particular from Turkey.

„Residential obligation“ for asylum applicants

The so-called “residential obligation” requires asylum seekers and persons whose deportation has been suspended to stay within certain geographic restrictions set out by the relevant authority. This obligation is based on sections 56 and 85 of the Asylum Procedure Law (for asylum seekers) and sections 61 and 95 of the Residence Act (for persons whose deportation has been suspended). The geographic restrictions have been the subject of protests and campaigns by human-rights and refugee organisations for years.¹¹⁷

¹¹⁶ See “[41.332 Asylanträge im Jahr 2010](#)” (“41,332 asylum applications in 2010”), press release of the Federal Ministry of the Interior, 17 January 2011, Berlin.

¹¹⁷ See for example the internet site <http://www.residenzpflicht.info>.

Opposition parliamentary groups in the Bundestag are calling for almost unrestricted freedom of movement for asylum seekers and the abolishment of residence restrictions for persons whose deportation has been suspended, who are required to leave the country or who may temporarily stay.¹¹⁸ The government, however, is in favour of the current provision, as it believes that it helps to secure a balanced distribution of the tasks and burdens related to the admission of asylum seekers and to ensure that asylum seekers are available at any time so that asylum procedures can be conducted quickly.¹¹⁹

In 2010, the geographic restrictions were loosened in some Federal States. In Berlin and Brandenburg, ordinances entered into force at the end of July 2010 which say that asylum seekers and persons whose deportation has been suspended may be granted permanent permission to reside in the other state under certain preconditions.¹²⁰

7.3 Developments from the EU perspective

Increase in the number of asylum seekers from Serbia and Macedonia and associated reactions

Since the abolishment of the visa requirement for citizens of Macedonia, Montenegro and Serbia on 19 December 2009 the number of initial asylum applications by people from Serbia and Macedonia has risen palpably. In 2010, the Federal Office for Migration and Refugees registered 4,978 initial asylum applications from Serbia (2009: 581) and 2,466 from Macedonia (2009: 109). The increase amounts to 757% and 2,162%, respectively. A look at the development during the year shows that asylum applications from these countries rose steadily until November 2010. Only in December did the numbers decline markedly. Bavarian Minister of the Interior Joachim Hermann and other interior policymakers were sceptical about the jump, pointed to the risk of increasing abuse of asylum rights and questioned the visa exemption for nationals of these countries. REAG/GARP funds¹²¹ to promote voluntary returns was regarded as reason for the development. In order to abolish potential indirect financial incentives for coming to Germany and filing asylum applications the Federal Government and the states stopped paying return funds to Serbian and Macedonian nationals.¹²²

Conclusion of the admission procedure for refugees from Iraq

At the end of April 2010 the resettlement efforts for Iraqi refugees residing in Syria and Jordan described in earlier EMN Annual Policy Reports were terminated. Overall, 2,501 Iraqi refugees who had fled to Syria and Jordan were resettled in Germany. They were granted residence pursuant to section 23 (2) AufenthG (“admission in order to safeguard special political interests of the Federal Republic of Germany”).¹²³

¹¹⁸ See [BT printed paper 17/3065](#), 29 September 2010, and [BT printed paper 17/2325](#), 30 June 2010.

¹¹⁹ See [BT printed paper 17/2261](#), 22 June 2010, p. 2.

¹²⁰ See “Residenzpflicht: Mehr Freizügigkeit für Asylbewerber und Geduldete in Berlin und Brandenburg” (“Residence obligation: More freedom of movement for asylum seekers and persons whose deportation has been suspended in Berlin and Brandenburg”), press release of the Ministry of the Interior and the Senate Department of the Interior of the State of Berlin, 28 July 2010, Potsdam/Berlin.

¹²¹ Reintegration and Emigration for Asylum-Seekers in Germany/Government Assisted Repatriation Programme (see chapter 5.2).

¹²² See press release [No. 383/10](#), Bavarian Ministry of the Interior, 19 October 2010

¹²³ For details of the procedure see [Annual Policy Report 2008](#), p. 18f., and Parusel, Bernd (2010): [The Granting of Non-EU Harmonised Protection Statutes in Germany](#). Study II/2009 in the framework of the European Migration Network (EMN). Working Paper 30, Nuremberg: Federal Office for Migration and Refugees, pp. 16, 27-28 and 71.

Admission of refugees from Malta

In 2010, Germany admitted a total of 102 refugees from Malta in the framework of the EU pilot project “Project for intra-EU reallocation from Malta (EUREMA)”. Most of them came from Somalia, Eritrea and Sudan. The legal basis is section 23(2) AufenthaltG; the refugees entered Germany on 21 October 2010. Other EU Member States also admitted refugees in the framework of the EUREMA project.¹²⁴

Constitutional complaint against the Dublin II regulation

In 2010, the Federal Constitutional Court had to decide on the question of whether, in special cases, temporary legal protection needs to be granted against transfers under the Dublin II Regulation.¹²⁵ The complainant – an Iraqi national – had applied for asylum in Greece and lodged another asylum application in Germany. The Federal Office for Migration and Refugees deemed the asylum application to be inadmissible and ordered a transfer to Greece. During the procedure, the complainant argued that the situation in Greece made temporary legal protection against the transfer necessary. He argued that it was difficult to get access asylum procedures in Greece, that the Greek authorities did not deal transparently with asylum seekers’ demands for protection and that provisions for asylum seekers were insufficient.¹²⁶

Against the background of the procedure in front of the Federal Constitutional Court and the developments in Greece, then Federal Minister of the Interior Thomas de Maizière decided at the beginning of 2011 that third-country nationals should not be transferred back to Greece under the Dublin II Regulation for one year. Germany is to use its right to enter into the procedure itself. The temporary waiver of transfers is to contribute to the consolidation of the Greek asylum system. In view of the situation in Greece concerning the provision of a human-rights-related asylum procedure Germany had already stopped transfers of particularly vulnerable persons to Greece and used its right to act itself. In 2009, Greece had made 2,288 transfer requests, and in 870 cases Germany acted; 200 transfers were made. In 2010, Greece made 2,458 transfer requests, and in 1,281 of these cases Germany acted itself; only 55 persons were transferred to Greece. In principle, however, Germany still regards Greece as a safe third country for asylum seekers and expects it to implement the measures announced in the National Action Plan to better deal with the influx and remove existing deficits in the treatment of refugees and migrants.¹²⁷

Moreover, the Federal Government offered the Greek government bilateral, practical support in asylum policy, for example in the form of study visits of Greek authority representatives to the Federal Office for Migration and Refugees (BAMF), training measures, the deployment of a Greek liaison official to the BAMF, the provision of information on German decision-making and legal practice and access to the BAMF’s information on the countries of origin for Greek authorities. Since April 2010, a liaison official of the BAMF has been deployed to Athens.¹²⁸

¹²⁴ See [BT printed paper 17/203](#), 15 December 2009, p. 10.

¹²⁵ Council Regulation (EC) no. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

¹²⁶ See press release [No. 79/2010](#) of the Federal Constitutional Court, 17 September 2010

¹²⁷ See “[Deutschland übt Selbsteintrittsrecht aus](#)” (“Germany to use right to act itself”), press release of the Federal Ministry of the Interior, 19 January 2011.

¹²⁸ See the answer of the Federal Government to the minor interpellation “Aktuelle Berichte zur Situation des griechischen Asylsystems und Konsequenzen der Bundesregierung hieraus” (“Current reports on the situation of the Greek asylum system and consequences drawn by the Federal Government”), [BT printed paper 17/4356](#), 3 January 2011.

8 Unaccompanied minors (and other vulnerable groups)

8.1 Specific context

Unaccompanied minors

Unaccompanied minors (UM) come to Germany because they are fleeing from war, human-rights violations and poverty and are looking for protection or a better living situation. Some of them have lost their families, others were separated from their parents during their flight and others were sent to Europe by their families. Between 2002 and 2007 the figure of UMs who file an asylum application in Germany has declined. In 2002, 873 unaccompanied minors who were aged less than 16 applied for asylum with the Federal Office of Migration and Refugees. In 2007, only 180 applications were registered. In 2008, the number of unaccompanied minors aged less than 16 rose again. Including unaccompanied minors aged 16 and 17, to whom the normal residence and asylum procedures apply, a total of 763 unaccompanied minors applied for asylum in Germany in 2008. In 2009, 1,304 unaccompanied minors applied for asylum. In 2009, the five main countries of origin were Afghanistan (453), Iraq (223), Vietnam (61), Guinea (48) and Ethiopia (45). The protection ratio – i.e. the share of those who were recognised as entitled to asylum or who were granted refugee status or subsidiary protection – was 48.6% in 2009.

The different residence, asylum and social security measures and procedures used in connection with the entry, admission and potential return of unaccompanied minors are subject to particular requirements due to national and international rules concerning the protection of children and teenagers. In terms of entry, for example, it is key that unaccompanied minors are recognised as such by the border authorities so that – if no refusal to enter or refoulement is necessary and no family is residing in Germany – the responsible youth welfare office will be informed, which will then care for them, provide a legal representative and provide adequate housing. Once the youth welfare office has taken custody of the young people, the so-called “clearing procedure” starts. It serves to determine the young person’s needs for support and to check whether the unaccompanied minors have relatives living in Germany or another EU Member State and whether it makes sense to file an asylum application. Up to now, the clearing procedure is handled differently by each Federal State, provided it is available. The asylum procedure, in contrast, is uniform. The Federal Office employs specialised asylum staff who have been trained in dealing with unaccompanied minors. They are to take care that the interview is less formal for unaccompanied minors than for adults. Moreover, they should respond with particular sensitivity to minors’ needs.¹²⁹

Persons with special needs

Asylum applicants regularly claim health issues in asylum procedures. Post-traumatic stress disorder (PTSD) is often invoked. In such cases the Federal Office for Migration and Refugees examines whether protection may be granted for health reasons. Depending on the asylum seeker’s claims, this

¹²⁹ For more information on the treatment of unaccompanied minors in Germany see Parusel, Bernd (2009): [Unaccompanied Minors in Germany – reception, return and integration arrangements](#), Working Paper 26 of the study group of the Federal Office, Nuremberg: Federal Office for Migration and Refugees; and Parusel, Bernd (2010): *Unbegleitete minderjährige Flüchtlinge – Aufnahme in Deutschland und Perspektiven für die EU* (“Unaccompanied minor refugees – reception in Germany and outlook for the EU”), ZAR vol. 7/2010, p. 233 et seq.

protection can take the form of the applicant's being recognised as entitled to asylum, his being recognised as a refugee or his being granted subsidiary protection.

The Federal Office staff themselves are not trained to recognise PTSD or other psychological illnesses, as they lack the necessary medical and psychological knowledge. The initial goal is to recognise unusual behaviour or unusual statements by the asylum seekers and thus to collect evidence whether they might be victims of violence or gender-specific persecution. If the staff get the impression that the asylum seeker suffers from a psychological illness, the responsible state authority will be informed in order to ensure that the asylum seeker receives the necessary medical treatment.¹³⁰

In order to deal adequately with such procedures and respond sensitively to any such clues during the interview, decision-makers have received trainings on raising awareness on how to deal with traumatised asylum seekers since 1996.

8.2 Developments within the national perspective

Asylum applications by unaccompanied minors in 2010

In 2010, 1,948 unaccompanied minors filed an initial asylum application in Germany. This means that the number of unaccompanied minors rose strongly again. In 2009 there had already been considerably more initial asylum applications by unaccompanied minors than in 2008 (1,304 versus 763). In 2010, the five main countries of origin were Afghanistan (802 unaccompanied minors), Somalia (253), Iraq (200), Syria (57) and Ethiopia (46). The rise in the overall figure is largely due to a surge in the number of applicants from Afghanistan in 2010 (this development already started in 2009, when 453 asylum applicants came from there) and a jump in the number of applicants from Somalia (2009: 33).

The protection ratio¹³¹ dropped to 35.6% in 2010, from 48.6% in 2009. As in the preceding years, the protection ratio is considerably higher for unaccompanied minors than for adult applicants. The overall protection ratio for all asylum seekers was 21.6% in 2010.

Withdrawal of the German reservation against the UN Children's Rights Convention

In 1992 the Federal Government had declared that the provisions of the UN Convention on the Rights of the Child (UN Children's Rights Convention) did not mean that a foreigner was permitted to illegally enter into or reside in the Federal Republic and that the Convention did not affect the right of the Federal Republic to pass laws and ordinances concerning foreigners' entry into or the prerequisites for their residence in Germany or to distinguish between German nationals and foreigners. This reservation was to prevent any mistaken or exaggerated interpretations of the Children's Rights Convention, such as the idea that children from all countries world-wide had a claim to entry into Germany and to a right of residence.

The coalition agreement between the CDU, the CSU and the FDP signed after the elections of 27 September 2009 says on the issue of children's rights that the new government will aim to withdraw this reservation.¹³² On 3 May 2010 the Federal Cabinet decided on the withdrawal of the reservation.¹³³ On

¹³⁰ Psychological illnesses will only be taken into account in the asylum procedure if they are certified by a medical expert. Once such a certification is available, the facts of the individual case may be clarified further by interviewing the doctor who is responsible for the treatment or by seeking a specialist opinion so that it is possible to determine whether the preconditions for protection are in place.

¹³¹ The total protection ratio is the sum of recognised asylum seekers under the Basic Law, the number of refugees who are granted protection under the Geneva Convention and the number of people who enjoy subsidiary protection in relation to the total number of decisions taken in the relevant year.

¹³² See [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 98.

15 July 2010, a declaration to this effect was made to the United Nations at New York. At the federal level the withdrawal of the reservation did not lead to changes in the legal treatment of unaccompanied minors in Germany. Rather, the Ministry of the Interior reassured the state ministers and senators of the interior that the withdrawal would not result in changes to the Residence Act and the Asylum Procedure Act.¹³⁴ Federal Minister of Justice Sabine Leutheusser-Schnarrenberger asked the Federal States to critically review the application of the law at the state level. Changes in practice might be possible in the area of detention for the purpose of removal and social and medical treatment of unaccompanied minors.¹³⁵

8.3 Developments from the EU perspective

Evaluation of the Commission's action plan on unaccompanied minors

In May 2010 the EU Commission presented an action plan for the treatment of unaccompanied minors in the EU at the request of the council of ministers. This plan includes numerous declarations of intent which aim at taking into account children's well-being and respecting children's and human rights. It focuses on preventing uncertain migration to Europe and recommends, among other things, strengthening the search for relatives of unaccompanied minors, shaping the admission procedures in a child-related and quicker way and providing adequate reception and custody facilities in the EU.¹³⁶

The Bundesrat was skeptical about several aspects of the action plan. In a decision dated 9 July 2010 the preventative approach of the action plan – i.e. dealing with the fundamental causes of illegal migration by unaccompanied minors – is regarded as positive. Moreover, the Bundesrat welcomes the stricter approach in fighting criminal structures such as human trafficking and trafficking in migrants and the use of targeted information campaigns in order to prevent the creation of myths concerning life in Europe. The Bundesrat welcomed the Commission's intention to take care that the existing EU laws on the protection of unaccompanied minors are correctly implemented in all Member States. The Bundesrat does not believe that additional common rules on the reception of and support for unaccompanied minors are necessary (for example on legal representatives and legal advice, access to housing and provisions, first interviews, education, healthcare etc) in view of the existing, comprehensive *acquis communautaire*. It regards the existing rules as sufficient and adequate.¹³⁷ Experts were also positive about certain aspects of the action plan.¹³⁸

¹³³ See *Süddeutsche Zeitung*, 4 May 2010.

¹³⁴ See "[Innenminister fordern Ächtung linker Gewalt durch alle Teile der Gesellschaft](#)" ("Ministers of the Interior call for ostracizing left-wing violence across society"); press release concerning the conference of the ministers of the interior 2010, 28 May 2010, Hamburg.

¹³⁵ See "Vorbehalte aufgehoben" ("Reservation withdrawn"), *Frankfurter Allgemeine Zeitung*, 16 July 2010.

¹³⁶ See [COM\(2010\) 213 final](#), Brussels, 6. Mai 2010.

¹³⁷ See [BR printed paper 281/10](#) (decision), 9 July 2010.

¹³⁸ See for example *PRO ASYL e.V.*, [Newsletter no. 159, June 2010](#).

9 Global approach to migration

9.1 Specific context

As part of a multi-dimensional strategy the European Council adopted the “Global Approach to Migration”, an overarching migration-policy concept, in December 2005. This Global Approach includes a crackdown on illegal immigration while exploiting the opportunities of legal migration as well as strengthening the nexus between migration and development policy through fighting the root causes for migration. Its core goal is to establish a fair political dialogue and a stronger cooperation on issues of migration policy with the countries of origin and transit. In the Stockholm Programme the Member States agreed in 2009 to develop the overall approach further while keeping the geographical balance. The focus is to remain on cooperation with countries of origin and transit in Africa and eastern and south-eastern Europe.

Since December 2007, EU mobility partnerships have been initiated as the most important policy instrument within the Global Approach to Migration. Mobility partnerships are political agreements creating incentives for third countries particularly in the area of legal migration and development and combining them with obligations to cooperate in refugee protection and the fight against illegal migration. The joint declarations of the respective mobility partnerships contain an annex with the participating states as well as a list with the envisaged actions.

The first pilot mobility partnerships were agreed upon in June 2008 on occasion of a meeting of the EU Justice and Home Affairs Ministers with Moldova and Cape Verde; Georgia followed in November 2009.

Germany actively participates in the mobility partnerships with Moldova and Georgia and contributes with a number of projects and measures.

Further instruments within the Global Approach to Migration are as follows:

- Drawing migration profiles in order to generate specific data from third countries, and fort he latter to extrapolate the preliminary needs for cooperation (forming a basis for implementing all other instruments);
- Carrying out missions in designated third countries along the essential migration routes, in order to explore possibilities for dialogue and cooperation as a preparatory measure for implementing further instruments of the Global Approach;
- Setting up cooperation platforms in order to locally or regionally coordinate existing or foreseen individual initiatives;
- Mobility partnerships (see above).

9.2 Developments from the EU perspective

In June 2008 the EU and several EU Member States, after preparatory actions and negotiations with the EU Commission, concluded mobility partnerships with the Republic of Moldova and Cape Verde. 15 EU Member States, among them Germany, participate in the partnership with the Republic of

Moldova.¹³⁹ Four EU Member States participate in the partnership with Cape Verde.¹⁴⁰ On 30 November 2009 another mobility partnership was concluded with Georgia. Germany is one of the 16 interested EU Member States¹⁴¹ and it is also designated to participate in the foreseen mobility partnership with Armenia.

During the reporting period the Federal Republic participated actively in the mobility partnerships with Moldova and Georgia. In order to promote legal migration the EU mobility partnerships made outward mobility easier. Nationals of the Republic of Moldova and of Georgia who hold a legal residence title for Germany may leave Germany for a longer period than the usual six months (namely for up to 24 months) without losing their German residence permit. Furthermore, Germany contributes in the areas of border management and border control, capacity increases in the areas of migration, integration and asylum and modern administration.

During the reporting period the Federal Republic participated actively in the EU migration missions to Armenia, Belarus and Ukraine.

With a view to Africa Germany participated actively in the EU cooperation platform on migration and development with Ethiopia; among other things, it co-chaired the working group on returns and refugees. Germany also participated in a joint expert group in the framework of the EU-African partnership on migration, mobility and employment.

As an instrument to support money transfers by migrants, as foreseen in the European Pact, the website on money transfers established jointly by the Federal Ministry for Economic Cooperation and Development and the Frankfurt School of Finance & Management was continued by the Frankfurt School alone in 2010.¹⁴² The internet site enables users to compare the costs of money transfers from Germany to 33 countries of origin. The goal is to increase the transparency of the money transfer market and strengthen competition. Moreover, money transfers to the countries of origin are to be made cheaper and more secure.

To involve and support diaspora groups with development-policy goals in the framework of European initiatives the Federal Government supports community projects migrants start in their countries of origin. Associations can present their project ideas and apply for advice and possible financial support.

¹³⁹ The others are Bulgaria, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, the Czech Republic, Hungary and Cyprus.

¹⁴⁰ France, Luxembourg, Portugal and Spain.

¹⁴¹ The others are Belgium, Bulgaria, Denmark, Estonia, France, the UK, Greece, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, the Czech Republic and Sweden.

¹⁴² www.geldtransfair.de

10 Implementation of EU legislation

10.1 Transposition of EU legislation in 2010

In 2010, lawmakers in Germany continued to deal with transposing European Union Directives, Regulations and Decisions into national law. The relevant legal acts are described in brief below.

Directive 2008/115/EC (Return Directive)

The Directive was to be transposed into national law by the Member States by 24 December 2010. At the end of 2010 a relevant draft bill was in preparation, yet not debated in parliament; the decision and complete implementation will take place in 2011. Until the law enters into force, the principle of the direct application of Directives will apply. The Federal Ministry of the Interior has therefore provided the states – which are responsible for implementing aliens' laws in Germany – with application guidelines, which include the principles for the direct application of the Directive from 24 December 2010.

Directive 2009/50/EC (Blue Card Directive)

The Directive is to be transposed into national law by the Member States by 19 June 2011. The necessary legal steps have been initiated.

Directive 2009/52/EC (Employer Sanctions Directive)

The Directive is to be transposed into national law by the Member States by 20 July 2011. The necessary legal steps have been initiated.

Regulation (EC) No. 380/2008 (uniform format for residence permits)

The Council Regulation (EC) No 380/2008 amending Regulation (EC) No 1030/2002 (“regulation on a uniform format for residence permits”) entered into force on 19 May 2008. It is directly applicable in Germany. National law will however be substantiated and adapted to the regulation by means of an act which will essentially come into force on 1 September 2011.

Regulation (EC) No. 810/2009 (visa code)

The Visa Code Regulation of 13 July 2009 is to be directly applied by the Schengen Member States, and its key parts have been in force in Germany since 5 April 2010 (see chapter 5.1.3).

Decision 2004/512/EC (visa information system)

The concrete implementation of the Visa Information System is carried out according to the Visa Regulation.¹⁴³ On the starting issuance of biometric visas see chapter 6.2.2.

¹⁴³ Regulation (EC) No. 767/2008 of 9 July 2008.

10.2 Experiences, debates in the (non-) implementation of EU legislation

European Court of Justice rules on revocation of refugee status

In a judgment dated 2 March 2010¹⁴⁴ the European Court of Justice decided on grounds for revoking refugee status after a referral by the German Federal Administrative Court. If the “situation in a refugee’s country of origin has changed in a significant and non-temporary manner”, the circumstances justifying a third-country national’s fear of persecution have ceased to exist. The characterisation as “significant and non-temporary” means that the situation needs to have changed in such a way that reasons for fearing persecution have permanently ceased to exist. If that is the case, the court will have to examine whether the foreigner does not have any other reasons to fear being persecuted. In doing so, the court needs to use the same measure of probability as for the decision on recognition as a refugee.

Implementation of the Qualification Directive

Concerning the implementation of the Qualification Directive 2004/83/EC the Federal Administrative Court made some basic statements on granting protection under European law in its judgment dated 27 April 2010.¹⁴⁵ The 10th senate of the Federal Administrative Court decided on the effects of Art. 4(4) of the Directive on asylum decisions in Germany so far. The less strict probability measure of “sufficient security” is not important for the examination for recognition as a refugee or for subsidiary protection under European law any more. If a person has already suffered persecution or serious damage, Art. 4(4) of the Qualification Directive will apply, leading to the refutable resumption that the refugee will be threatened with repeated persecution or damage. The foreigner will therefore not have to give valid reasons for the suspicion that he or she will once again be subjected to persecution after a return. Sufficient security from persecution will, however, be regarded as a valid reason as defined by Art. 4(4) of the Directive. Moreover, the Federal Administrative Court confirmed the prohibition of deportation set out in section 60(2) AufenthaltG without limitation, including deportations to a signatory state of the European Human Rights Convention.

Terrorism clause within the Qualification Directive

After a referral by the Federal Administrative Court the European Court of Justice decided on 9 November 2010 on issues concerning refusing refugees on the grounds of the Qualification Directive in case of terrorism.¹⁴⁶ Membership in an organisation which uses terrorist methods does not automatically result in a person’s being excluded from refugee status. Rather, the actual circumstances of the individual case have to be examined to find out whether serious reasons justify the assumption that a person committed a serious non-political crime in the framework of their actions within the organisation or committed acts that run counter to the goals and principles of the UN, incited others to such crimes or acts or participated in them in any other way.

Moreover, the European Court of Justice sets out certain steps to examine potential reasons for exclusion. For example, it is necessary to give someone individual (co)responsibility for acts committed by the organisation during his membership. The responsibility has to be judged on the basis of objective

¹⁴⁴ Ref. no. C-175/08, *Entscheiderbrief* 3/2010, year 17, Federal Office for Migration and Refugees, p. 5.

¹⁴⁵ Ref. no. 10 C 5/09

¹⁴⁶ Ref. no. C-57/09 <5045053> and C-101/09 <5052347> in *Entscheiderbrief* 11/2010, year 17., Federal Office for Migration and Refugees, p. 1.

and subjective criteria, and in particular the role of a protection-seeking individual in the realisation of terrorist acts has to be examined.

Legal definition of persecution in cases when religious freedom is affected

Moreover, the Federal Administrative Court decided on 9 December 2010 to refer the interpretation of Art. 9(1a) of the Qualification Directive to the European Court of Justice.¹⁴⁷ The concrete question is whether any threat to religious freedom which violates Article 9 of the European Human Rights Convention is an act of persecution within the meaning of the Directive or whether religious freedom as a fundamental human right is only affected seriously if its core is affected. The European Court of Justice will have to decide whether the core area of religious freedom is limited to the religious creed and the freedom to exercise one's religion at home and in one's neighbourhood or whether it can be regarded as persecution within the meaning of Art. 9(1a) if the public practice of one's religion in the country of origin may lead to danger to life, limb or physical freedom, which is why the applicant refrains from practicing his or her religion. Moreover, the Federal Administrative Court has asked the European Court of Justice to clarify whether the asylum seeker experiences justified fear of persecution pursuant to Art. 2c of the Qualification Directive if it is clear he or she will practice his or her religion outside the core area even though this will result in danger to life, limb or physical freedom or whether it is acceptable to ask him or her to refrain from such activities in the future.

The decision has not yet entered into decision-making practice in 2010, and there has not been a final judgment yet.

European Court of Justice rules on loss of Union citizenship

The European Court of Justice decision of 2 March 2010 in the "Rottmann" case¹⁴⁸ might affect the application or interpretation of the "option provision"¹⁴⁹ under German nationality law. According to the decision, a revocation of a naturalisation by national authorities (for example because the naturalisation was obtained on fake grounds) directly leads to the loss of the (supplementary) Union citizenship introduced in Art. 17 EC Treaty. If citizenship of a EU Member State is revoked, authorities will have to examine whether this step is proportionate, as Union citizenship will be lost as well. In this context it is likely that the potential loss of Union citizenship under the procedures implementing the so-called option provision in German nationality law will have to be in line with the principle of proportionality, too¹⁵⁰; however, there is no court decision on this question yet.

¹⁴⁷ Ref. nos. 10 C 19/09 and 10 C 21/09 in *Entscheiderbrief* 1/2011, year 18, Federal Office for Migration and Refugees, S. 1.

¹⁴⁸ Ref. no. C-135/08

¹⁴⁹ See chapter 4.5.2 and [Annual Policy Report 2009](#), p. 16.

¹⁵⁰ See Falk Lämmermann, *Ein Jahrzehnt jus soli – Bilanz und Ausblick* ("One decade of *ius soli* – results and outlook"), *Zeitschrift für Ausländerrecht und Ausländerpolitik* 1/2011, year 31, p. 5

Annex:

Overview of implementation of commitments in the European Pact on Immigration and Asylum and in the Stockholm Programme

LEGAL IMMIGRATION AND INTEGRATION

1. Economic migration

1.1 European Pact on Immigration and Asylum

I(a) Implement policies for labour migration

A number of statutory changes to secure the supply of skilled labour entered into force in Germany on 01 January 2009, therefore no further changes in labour migration law were made in 2010. The appropriate legislative preparations are under way for the transposition of the Highly Qualified Employment Directive 2009/50/EC into national law in 2011.

I(b) increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers:

Highly qualified workers can get permanent residence in Germany immediately. The required minimum income for 2010 and 2011 is €66,000. The earnings ceiling for general old age pension insurance which is reassessed annually is linked to this income. There is an option to grant immediate permanent residence to scientists with specialist knowledge, to teaching personnel or outstanding researchers, even though their income remains below this minimum.

The immigration of persons belonging to this group amounted to approx. 340 in the first six months of 2010 which is the same number as during the 2009 reference period.

Furthermore all university graduates from third countries can be admitted to the German labour market, subject to the condition that no person entitled to preferential treatment is available and the working conditions are comparable to those of national employees.

Access to the labour market was made easier for international graduates from German universities as of 16 October 2007.

The number of graduates that stayed in Germany for employment increased to 3,950 in the first nine months of 2010 compared with 3,656 graduates in the 2009 reference period.

Germany already previously dispensed with examining the labour market before issuing a residence permit for researchers, which is a rather straightforward process.

Labour market needs tests before issuing permits to family members of executives, researchers and visiting scientists was stopped on 01 January 2009.

I(c) Do not aggravate the brain drain

No policy measures were taken to encourage the emigration of skilled labour. The Federal Government is promoting the transfer of knowledge with the programme "Re-turning skilled labour". The programme includes personal counselling on return and career planning, assistance in finding a job advancing the returnee's career, network-ing with significant organizations on location and in some cases financial subsidies. This is an active contribution of the Federal Government to fight the brain drain.

1.2 Stockholm Programme

1(b) Improving skills recognition and labour matching

Describe any (planned) measures to improve the skills recognition of third-country nationals and labour matching between your Member State and third countries (including online employment, etc). Linked to this, describe whether and how your Member State analyses its labour market needs / shortages. Also consider the effect of the economic crisis.

In December 2009 the Federal Government resolved on the key elements for improving the assessment and recognition of international vocational and general qualifications and skills. These key elements include:

1. General right to a recognition procedure (hitherto only for ethnic German expatriates returning from the East and EU citizens in controlled professions)
2. inclusion of controlled and non-controlled professions
3. development of uniform criteria for recognition procedures and
4. separation of the recognition procedure from the applicant's residence status and nationality.

A law to implement these key elements is planned for 2011.

Third country nationals can search for a job on the German labour market for instance in the following ways:

International Placement Office of the Federal Employment Agency

Within the Federal Employment Agency the Zentrale Auslands- und Fachvermittlung (ZAV) is responsible for international placement. On its homepage <http://www.ba-auslandsvermittlung.de>, ZAV offers information for workers from abroad that are interested in working in Germany. Follow the link http://www.ba-auslandsvermittlung.de/lang_de/nn_454852/DE/LaenderEU/Deutschland/Arbeiten/arbeiten-knoten.html__nnn=true. The counsellors of the International Placement Office also advise about the recognition of international qualifications and the German labour market.

JOBBÖRSE (job exchange) of the Federal Employment Agency

On the homepage of the Federal Employment Agency at <http://www.arbeitsagentur.de> and following the link "JOBBÖRSE", third-country nationals seeking a job in Germany can search the vacancies posted by German employers and upload their own candidate profile.

With the support of researchers the Federal Ministry of Labour and Social Affairs is developing tools for regular and permanent description of the current and future labour demand and supply by industries, occupations, qualifications and regions, i.e. a labour monitoring system.

1.3 Key statistics

<i>First residence permits, by reason</i>				
(Residence and settlement permits issued in 2010 to third-country nationals arriving for the first time in Germany after 1 January 2010) ¹⁵¹				
2010	Total	Education reasons	Remunerated activities reasons	Other reasons
First permits	125,978	42,775	25,015	58,188

<i>All valid residence permits, by duration</i>				
Germany does not record the duration of residence permits				
	Total	3-5 months	6-11 months	12 months and over
All permits				

<i>Unemployment rates of Member State citizens versus third-country nationals residing in the Member State</i>		
	Member State citizens (German nationals)	Third-country nationals
Unemployment rate (%) (age 15 – 74)	6.3	17.0

2 Family Reunification

2.1 European Pact on Immigration and Asylum

I(d) To regulate family migration more effectively

Even prior to the adoption of the migration pact the German residence law provided for a detailed system of regulations on family unification with special emphasis on the families' integration capacity.

In September 2010 the evaluations of the impact of the provisions on the proof of language skills prior to the admission of a spouse, which were introduced in August 2007, have been completed. It was concluded that these regulations have proved beneficial. Increased efforts are made to prevent fictitious marriages. A bill on extending the required minimum length of a marriage was adopted by the Federal Government in October 2010.

¹⁵¹ Source: „Wanderungsmonitoring“ of the Federal Office for Migration and Refugees.

2.2 Stockholm Programme

2(b) The Directive on family reunification, the importance of integration measures

No plans.

2.3 Key statistics

First residence permits to third-country nationals for family reasons

(Residence and settlement permits issued in 2010 to third-country nationals for family reasons, arriving for the first time in Germany after 1 January 2010) ¹⁵²

2010	48,680
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3 Other legal migration

3.1 European Pact on Immigration and Asylum

I(e) to strengthen mutual information on migration by improving existing instruments where necessary;

Mutual information is ensured via the bodies of the Council and other EU bodies.

I(f) Improve information on the possibilities and conditions of legal migration

Please describe any (planned) measures to improve the provision of information on the possibilities and conditions of legal migration. These could include, for example, information campaigns, websites, specific centres, etc. Also refer to the European Migration Portal. Consider the effects of the economic crisis.

Germany is offering a wealth of information about the possibilities of immigration to Germany on the internet, such as the websites of the responsible Federal Ministries and the Federal Employment Agency. Specifically, these are:

Foreign Office:

http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html (in English);

Federal Ministry for Labour and Social Affairs:

<http://www.bmas.de/DE/Themen/Arbeitsmarkt/Auslaenderbeschaeftigung/inhalt.html> (in English);

¹⁵² Source: „Wanderungsmonitoring“ of the Federal Office for Migration and Refugees.

Federal Ministry of the Interior:

http://www.zuwanderung.de/ZUW/DE/Zuwanderung_geschieht_jetzt/ZuwanderungAZ/ZuwanderungAZ_node.html

Federal Employment Agency: <http://www.arbeitsagentur.de/zentraler-Content/Veroeffentlichungen/Merkblatt-Sammlung/MB7-Beschaefigung-ausl-AN.pdf>

The Federal Ministry for Labour and Social Affairs also issued a series of leaflets entitled "Working in Germany".

3.2 Stockholm Programme

The relevant commitments in the Stockholm Programme are similar to the Pact objective above, hence no further information required.

4 Integration

4.1 European Pact on Immigration and Asylum

I(g) Promote harmonious integration in line with the common basic principles

The common basic principles may be found in the JHA Council Conclusions of 19 November 2004, [doc. 14615/05](#),¹⁵³ as well as the Commission Communication [COM\(2005\) 389](#).¹⁵⁴

Since 1 January 2005 recent immigrants from third countries are entitled to attending a German language course of 600 hours and an orientation course of 45 hours on the legal order, culture, and history of Germany. Special courses are offered for certain target groups (parents, women, young people, illiterates, and fast learners) that can cover up to 1,200 hours. Also migrants already in Germany can attend the courses and may even be obliged to do so, if they receive welfare benefits for job-seekers. The participants pay only 1€ per hour of class; welfare recipients and ethnic German expatriates from the East can attend free of charge. The courses are evaluated and improved on an ongoing basis. There are plans to extend the orientation course from 45 to 60 hours. Before, during and after the integration courses migration-related counselling is available for adult or young immigrants to provide practical support for their efforts to integrate into and participate in German society in accordance with their requirements.

There are several schemes to assist with their integration into the labour market including specific programmes for immigrants teaching job-related language skills, one of them funded by the ESF.

In September 2010 the nationwide integration programme was published. It takes stock of the integration schemes offered at the levels of the federation, the federal states, local governments and independent organizations and includes recommendations for further developments in the fields of language skills, education, vocational integration, social counselling and integration.

I(h) Promote information exchange on best practices in terms of reception and integration

Information and best practices are exchanged at several levels and within several bodies. Within the scope of the National Integration Plan the federation, the federal states, and local governments as well as representatives of the civil society and of migrants agreed on tangible objectives and over 400 specific measures and commit-

¹⁵³ Available from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf.

¹⁵⁴ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0389:EN:NOT>.

ments by state and non-state players. The starting point of the action programme to implement the National Integration Plan was the integration summit meeting on 3 November 2010. The action programme shall help to specify and develop the National Integration Plan. Here again, as in the drawing up of the National Integration Plan the federation, the federal states, local governments and representatives of the civil society and of migrants will be involved.

The nationwide Integration Programme that was published in September 2010 resulted from the cooperation of the responsible departments in the federal government, the state and local governments as well as of religious communities, trade unions, employer associations, charities and other social stakeholders.

The inter-ministerial working group on integration has been reinstituted. The working group includes all federal agencies involved in integration and representatives of the federal government. Its task is to coordinate all of the federation's integration policy projects, to present the federal government's integration policy to the public in a consistent way, to network the agencies and promote a coordinated development of the policy. Germany participates in the meetings of the European Integration Forum and uses the European Website on Integration to exchange information.

4.2 Stockholm Programme

3(b) to incorporate integration issues in a comprehensive way in all relevant policy areas

Integration policy is one of the federal government's focus policies and relates to a number of policy areas within the competence of different ministries: labour (Federal Ministry for Labour and Social Affairs), education (Federal Ministry for Education and Research), children/youth (Federal Ministry for Family, Senior Citizens, Women, and Youth), social cohesion and immigration control (Federal Ministry of the Interior). Furthermore the Federal Chancellery has a Commissioner for Migration, Refugees and Integration.

3(e) improved consultation with and involvement of civil society

Civil society was involved in the preparation of the National Integration Plan and the development of the action plan for its implementation. There is continuous dialogue with and input from the representatives of civil society (see above).

Civil society representatives also played a major role in the development of the national Integration Programme (see above).

3(f) to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts

Please describe any measures taken in this regard. For example, indicate whether these are included in integration courses and programmes, whether specific activities, e.g. events, have been organised, etc.

The curriculum of the orientation courses covers the legal order, culture and history (see above).

In 2006 the federal government established the German Islam Conference (DIK) to institutionalize the dialogue between the German government and the representatives of Muslims in Germany. The DIK is designed as a long-term communication forum for the German government and the representatives of the Muslim population of Germany. The DIK aims at promoting the structural (legal aspects of religious practices) and social integration of the approximately four million Muslims living in Germany. The first phase of the DIK was completed with the end of the 16th legislative period (October 2009). It is now continued in its second phase, concentrating on practical aspects. The focus in this phase is to strengthen the practical participation of Muslims in German life e.g. by Islamic religious instruction at state schools and the establishment of Islamic theology classes at German universities. At the same time the representatives of the German government and the Muslims in Germany are stepping up their efforts to prevent extremism.

4.3 Key statistics

<i>Long-term third-country national residents</i>	
Number of long-term third-country national residents	Data for 2010 are not available yet.

<i>Acquisition of citizenship</i>	
Number of third-country national nationals (Citizens of countries other than of EU-27, EFTA and Candidate countries) taking up citizenship	Data for 2010 are not available yet.

ILLEGAL IMMIGRATION AND RETURN

5 Illegal Immigration

5.1 European Pact on Immigration and Asylum

II(a) only case-by-case regularisation

Germany did not take any action to regularise the stay of foreigners who are not registered or went into hiding. Germany persists in its generally critical assessment of any regularisation policy.

The regulations governing old cases (section 104a of the Residence Act) are not aimed at registering persons who went into hiding and as such cannot be considered a form of legalisation. By resolution of the Conference of the Ministers of the Interior of December 2009 the provision was extended for another two years until the end of 2011.

II(c) ensure that risks of irregular migration are prevented

The fight against irregular immigration is a key element of the national immigration policy and of Germany's cooperation with other Member States, countries of origin and of transit. Preventing (illegal) employment of persons in Germany and the execution of the return policy have special significance. The transposition of the sanction directive 2009/52/EC has been initiated in the legislature.

II(d) to develop cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrants

Germany completed one project under the Return Fund in 2009. A new project funded by the Return Fund has been started for 2010. It aims at improving operative cooperation with selected African states (e.g. Benin and Nigeria). Germany also regularly participates in the combined return transports co-financed by FRONTEX and organized by the Member States or by Germany (e.g. to Kosovo and Georgia). Germany also contributes experts to other FRONTEX projects (such as ATTICA to support Greece).

Further projects funded by the Return Fund are planned for 2011 and later years, some have already been submitted to the responsible agency (Federal Office for Migration and Refugees, BAMF). Most of these projects aim at improving operative cooperation (e.g. identifying more persons and persistently returning all of those required to leave).

II(g) take rigorous actions and penalties against those who exploit illegal immigrants

German law already provides for deterrent and proportionate sanctions for employers employing foreigners without lawful residence permit and thus possibly exploiting them. Under the Social Code a fine of up to five hundred thousand euros can be imposed (sec. 404 Social Code III). Any further provisions that need to be included into national law under directive 2009/52/EC ("Employer Sanctions Directive") will become German law within the transposition period.

II(h) an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS obliging other MSs to prevent the person concerned from entering or residing

Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals was already transposed into national law in 2005. Alerts under sec. 96 (3) Schengen Implementation Regulation in SIS are observed by the various responsible authorities in issuing visas, in the border and entry controls and in issuing residence permits.

5.2 Stockholm Programme

4(j) more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows

The prevention of and fight against the crimes of trafficking in human beings and smuggling of persons require a holistic approach. Any activities of the border police to prevent illegal entry of migrants must be closely linked to national and international law enforcement activities. For this purpose there is a tight network between the Federal Police and all security agencies in Germany at all levels.

Nationally the analysis and evaluation centre GASIM is of special significance as it permits a holistic approach to fighting crime by linking all agencies across the various types of crimes and jurisdictions. A close information exchange between agencies requires the consistent and interrelated application of all communication alternatives permitted in a state under the rule of law.

The Federal Police collects information abroad using liaison officers of the border police and of advisors on documents and visas in the most important countries of origin and of transit.

The cooperation within FRONTEX and Europol where common evaluation results are prepared or shared regularly or related to specific topics provides further information input.

4(k) increased targeted training and equipment support

All support provided by the Federal Police to combat irregular entry into the country is directly or indirectly related to border control activities.

4(l) a coordinated approach by Member States by developing the network of liaison officers in countries of origin and transit.

The national network of border police liaison officers (GVB) was enlarged by an additional accreditation of the GVB in Romania for Moldavia in October 2010. The Federal Police is involved in three 18-month-long Community measures funded by the EU External Borders Fund together with the Dutch Immigration and Naturalization Service (IND) and the Portuguese Immigration and Borders Service (SEF).

5.3 Key statistics

<i>Third-country nationals apprehended</i>	
Third-country nationals apprehended	Data are not available yet.

<i>Third-country nationals regularised</i>	
Third-country nationals regularised	Data are not collected in Germany.

6 Return

6.1 European Pact on Immigration and Asylum

II(b) To conclude readmission agreements at EU or bilateral level

Type of readmission agreement	Third countries involved	Main purpose of the agreement
Bilateral readmission agreement	Kosovo	Standard readmission rules similar to the EU read-mission agreements

II(f) To devise incentive systems to assist voluntary return and to keep each other informed

The German AVR-programme REAG/GARP has been in place since 1979. Addressing rejected asylum-seekers in particular, the following types of assistance are granted within the framework of the programme: payment of transportation costs; travel assistance (200 Euros per adult, 100 Euros per child under 12 years of age) and – for nationals of third-countries of particular interest to Germany under migration aspects – GARP start-up cash (up to 750 Euros per adult, 375 Euros per child under 12 years of age).

6.2 Stockholm Programme

4(c) ensuring that the objective of the EU's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices

Concluding/supporting the conclusion of readmission agreements – either at EU or national level – is one of the main elements of the German return policy to establish constructive relationships with third countries.

4(e) assistance by the Commission and Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third states

Under the FRONTEX project „Attica“, Germany contributed experts to support Greece to return third-country nationals.

4(f) increased practical cooperation between Member States, for instance by regular chartering of joint return flights

Germany participated in 13 joint return operations and organized 3 flights to date (October) in 2010. All of these flights were coordinated and some co-funded by FRONTEX. This type of cooperation has meanwhile become standard. This year the cooperation with other Member States to obtain travelling documents for a return was only limited, because the respective third countries usually declined to cooperate. Information on national activities, innovations, problems and success is exchanged regularly via FRONTEX.

6.3 Key statistics

Third-country nationals ordered to leave and returned				
Data for 2010 are not yet available.				
	Ordered to leave	Returned following an order to leave	Returned as part of forced return measures	Returned through an Assisted Return Programme
Third-country nationals				

7 Actions against human trafficking

7.1 European Pact on Immigration and Asylum

II(e) cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better information to communities under threat

Germany actively participated in the EU missions on migration to Armenia, Belarus, Kenya, and Ukraine as well as in the cooperation platforms on migration and development in Ethiopia and the pilot mobility partnership with Moldavia and Georgia.

Furthermore, German police is closely cooperating with other countries' law enforcement agencies to combat human trafficking and smuggling. The collaboration with the prosecuting authorities in the European partner countries is of special importance in this context. The European agencies "Europol" and "Eurojust" coordinate the law enforcement activities of the countries involved.

7.2 Stockholm Programme

The relevant commitments in the Stockholm are similar to the Pact commitments, hence no further description is required.

7.3 Key statistics

<i>Third-country nationals receiving a residence permit as victims of human trafficking¹⁵⁵</i>	
Third-country nationals	10

<i>Traffickers arrested and convicted</i>		
	Arrested / otherwise involved in a criminal proceeding	Convicted
Traffickers	Data for 2010 are not available.	Data for 2010 are not available.

BORDER CONTROL

8 Control and surveillance at external borders

8.1 European Pact on Immigration and Asylum

III(a) more effective control of the external land, sea and air borders:

The national agencies' border controls are already rather sophisticated. In the long term FRONTEX shall become one of the main agents in the coordination and management of the EU external borders - with due consideration of national competencies. One element to contribute towards this end is the amendment of the FRONTEX Regulation that is currently considered by the Council. The strict observance of all fundamental and human rights, in particular of the regulations of refugee law, is of utmost importance in this context. Germany has a keen interest in actively contributing to the development of FRONTEX and will therefore continue to second staff for joint missions at the external EU borders and to provide technical equipment to the agency. Germany is part of the first „Rapid Border Intervention Team“ to support Greece.

The effective control of external borders is guaranteed in line with the Schengen Border Code and the best practices defined by the Schengen member states.

Improvements were made in checking the authenticity of the features of electronic passports during border controls. In the long term the quality of the certificates of the manufacturers of passports and countries will be assured by the Public Key Directory (PKD) of ICAO, which will considerably facilitate a reliable verification according to ICAO regulations. The complete chain of certificates down to the root certificate is verified.

III(e) deploy modern technological means for border control:

Germany is using state-of-the-art devices for reading and verification of documents that check authenticity based on optical and digital characteristics very effectively. Germany is testing a registered traveller programme (ABG - Automated biometrically supported border control) and an automated border control system (easyPASS) based on the electronic passport. The biometric characteristic for ABG is the iris of the eye and for easyPASS the facial image saved in the electronic passport. Therefore no registration is required with easyPASS. In future more widespread use of biometrical procedures will also assist border control agents in verifying the identity of document holders (visa control, control of electronic passports).

¹⁵⁵ Residence permits issued according to section 25 (4a) in 2010 to third country nationals with first entry to the federal territory after 1 January 2010, source: "Wanderungsmonitoring" of the Federal Office for Migration and Refugees.

8.2 Stockholm Programme

7(i) invites the Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security.

See explanations in III(e) above.

8.3 Key statistics

<i>Third-country nationals refused entry</i>				
Data for 2010 are not yet available.				
	Total refused	Refused at the land border	Refused at the sea border	Refused at the air border
Third-country nationals refused entry				

<i>Visas issued in 2010</i>			
	Total Visas	Schengen Visas	National Visas
Visas ¹⁵⁶	1,752,474	1,609,846	142,628

9 Cooperation with respect to border control

9.1 European Pact on Immigration and Asylum

III(b) generalise the issue of biometric visas, improve cooperation between MSs' consulates and set up joint consular services for visas:

According to the time schedule of the rollout plans, Germany will start to issue biometrical visas in Northern Africa and then progress to other regions in line with the Commission's planning. Up front there will be a pilot phase.

The Commission is aware of the representation agreements for issuing Schengen visas (currently about 200 representations by Germany worldwide and about 20 for Germany), the required lists are regularly updated.

III(d) solidarity with MS subjected to disproportionate influxes of immigrants

Under the technical central register CRATE, Germany provides FRONTEX with a helicopter, a ship (for the North and the Baltic Seas) and infrared image cameras on request.

Officers of the German Federal Police participate in FRONTEX focal point actions and FRONTEX joint operations. Germany actively supported the preparation of guidelines for FRONTEX operations at sea.

¹⁵⁶ Source: Federal Foreign Office (<http://www.auswaertiges-amt.de>).

The EU Commission submitted a proposal for the development of the FRONTEX regulation in spring 2010. The Commission's FRONTEX draft regulation grew out of the results of the agency's evaluation in 2008/2009. The border agency is to be developed in the light of the Stockholm Programme and the Commission's related action plan designed to further strengthen FRONTEX. Major aspects to upgrade FRONTEX' role include the creation of a uniform mechanism for the deployment of Member States' border guards for joint operations, the possibility to procure its own operational equipment and to place its own liaison officers in third countries.

Since March 2010 the German Federal Police has been participating in the return project ATTICA on the Greek-Turkish border.

III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control

Based on bilateral agreements, Germany is using liaison officers in third countries, including for border control issues. These placements improve international cooperation and the early recognition of migration flows.

The liaison officer network in third countries will be expanded in line with the requirements of the border police.

9.2 Stockholm Programme

6(a) The European Council encourages the Commission and Member States to take advantage of the entry into force of the Visa Code and the gradual roll-out of the VIS

All national preparations for the start of operation of VIS were completed successfully according to the Commission's time schedule.

ASYLUM

10 International Protection

10.1 European Pact on Immigration and Asylum

IV(c) solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems:

Germany has offered assistance to the Greek authorities on a bilateral basis in 2009 and in September 2010 as part of the follow-up to the presentation of the Greek Action Plan on Migration Management. This includes access to the Information System on countries of origin ("MILO"), training and information on asylum procedures, access to the GDISC pool of interpreters, and reception of a Greek Liaison Officer in the Federal Office for Migration and Refugees. In special cases Germany evokes the sovereignty clause in Article 3 para. 2 under the Dublin procedure with regard to Member States facing disproportionate pressure from asylum-seekers.

Under the EU pilot project for intra-EU reallocation from Malta (EUREMA) Germany accepted 102 refugees from Malta to show its solidarity. They arrived on 21 October 2010.

IV(d) strengthen cooperation with the Office of the United Nations High Commissioner for Refugees to ensure better protection for people outside the territory of European Union Member States who request protection, in particular by moving, on a voluntary basis, towards the resettlement within the European Union

Please describe resettlement activities to your Member State of people placed under the protection of the Office of the UNHCR in third countries, specifying from which countries.

In cooperation with the UNHCR Germany accepted a total of 2,501 Iraqi refugees from Syria and Jordan. They arrived between 19 March 2009 and 27 April 2010. Germany agreed to accept up to 50 refugees from Iran that need protection after the repression of the opposition movement in Iran. They were selected in cooperation with the UNHCR mostly in Turkey and most of them have meanwhile arrived in Germany.

IV(e) MS are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection

Please describe the *provision or planning of provision of such training (and in which way, number and percentage of border control staff trained)*.

The “Declaration of Partnership” between the Federal Police Academy (BPOLAK) and FRONTEX was upheld and the German Federal Police participated in FRONTEX training projects in 2010 as well.

The professional training for law enforcement agents covers all relevant legal fields, in particular EU law, human rights and asylum law and therefore also the legal aspects relevant here. Their knowledge is permanently updated by passing on additional information and by training courses.

A „Framework Training Agreement“ (FTA) between FRONTEX and the partner academies to intensify and standardize initial and further training has been made. Germany supports the fact that the proposals for the recast of the qualification directive and the asylum procedure directive also provide for such training.

10.2 Key statistics

<i>Asylum applications and decisions</i>						
(all decisions including EU citizens; including abatements because of withdrawal of application)						
Applications and first instance decisions on asylum applications in 2010						
Total applications under consideration	Total positive	Rejected	Geneva Convention	Subsidiary protection	Temporary protection	Humanitarian status
48,589	10,395	27,255	7,704	2,691	0	<i>Included in column “subsidiary protection”</i>

<i>Third-country nationals reallocated and resettled to your Member States</i>			
	Total	Reallocated	Resettled
Third-country nationals	See explanations in the text.		

<i>Training of border guards on asylum</i>		
The figures are not yet available.		
	Total number of border guards	Border guards who received training
Border guards		

11 Unaccompanied Minors (and other vulnerable groups)

11.1 European Pact on Immigration and Asylum

No specific commitments are included.

11.2 Stockholm Programme

5(a) develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return

The increasing number of minors illegally entering Germany or applying for asylum receives much attention by policy-makers. For the Federal Republic of Germany the protection of children and young people is a matter of great concern. German law includes a large number of migration policy rules giving special attention to children and young people. This specifically relates to asylum procedures, the treatment of children and young people during border controls, their return and activities of the organizations for child and youth welfare. The federal states and local governments are providing an adequate system to accommodate and care for children and young people staying in Germany without their parents or an adult caretaker; this system has stood the test even in times in which the number of these minors has increased. Germany welcomed the action plan on unaccompanied minors submitted by the Commission on 6 May 2010; The Commission has, however, not yet done anything to implement it. Germany supports the approach to provide better protection for unaccompanied minors at the level of the EU and to intensify the pursuit of the criminal traffickers and smugglers.

Afghanistan still is the country of origin of most young people under 16 that are travelling alone. They usually enter Germany across the western borders and the airports. The routes they take correspond to our previous findings on irregular migration of people with this nationality.

11.3 Key statistics

<i>Unaccompanied minors</i>	
Number of unaccompanied minors	Data not collected.
Number of asylum applicants considered to be unaccompanied minors	1,948

12 External cooperation / global approach to migration

12.1 European Pact on Immigration and Asylum

V(a) conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development

Type of agreement	Third countries involved	Main purpose of the agreement
EU Mobility Partnerships	Georgia, Moldova	Closer cooperation in migration policy and effective migration control

V(b) offer the nationals of partner countries to the East and South of Europe opportunities for the legal immigration

Germany actively participated in the EU missions on migration to Armenia, Belarus, and Ukraine as well as in the pilot mobility partnerships with Moldavia and Georgia.

To promote circular migration so-called 'outward mobility' was facilitated as part of the EU mobility partnerships. Nationals from Moldova and Georgia staying legally in Germany can leave Germany for up to 24 months instead of the usual 6 months without losing their residence permit.

V(c) cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration

Preparation and submission of draft framework agreement on cooperation in migration policy with the Republic of Ghana.

V(d) More effective integration of migration and development policies

Germany is actively involved with the EU cooperation platforms on migration and development with Ethiopia. It co-chairs the working group „Returns and Refugees“.

Active involvement in a Joint Expert Group under the EU-Africa Partnership on Migration, Mobility and Employment.

V(e) promote co-development actions and support instrument for transferring migrants' remittances

In cooperation with the Frankfurt School of Finance & Management the federal government created the website www.geldtransfair.de which wants to inform migrants of the options and prices for transferring money with banks or money transfer agencies in an effort to make the money transfer market more transparent and to promote competition. Ultimately money transfers to the countries of origin shall become more economical and safer. The Frankfurt School of Finance & Management now continues to operate the website on its own.

12.2 Stockholm Programme

11(h) how diaspora groups may be further involved in EU development initiatives, and how EU Member States may support diaspora groups in their efforts to enhance development in their countries of origin

The federal government supports charitable projects of migrants in their countries of origin. Associations or groups can apply for their projects, receive counselling and sometimes financial grants.